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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. [redacted] 155

RICE & ADAMS CORPORATION, PETITIONER,

vs.

HARRY D. LATHROP.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FREDERICK G. MITCHELL,
CHARLES J. STAPLES,
WILLIAM P. CONLEY,
WILLIAM DORAN CUSHMAN,
Counsel for Petitioner.

(33,464)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1927.

No. 1012

RICE & ADAMS CORPORATION, PETITIONER,

vs.

HARRY D. LATHROP, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Supreme Court of the United States:

The petition of Rice & Adams Corporation respectfully shows to this Honorable Court:

A.

This suit was brought in equity in the United States District Court for the Western District of New York for infringement of United States letters patent No.

880,713, granted to James R. Blair on the 3d day of March, 1908 (R., 1), thereafter assigned to and owned by respondent, Harry D. Lathrop (R., 3), and to recover an accounting for profits and damages (R., 6). This suit was commenced on the 21st day of January, 1925, when the patent was about to expire and had only forty-one days to run (R., 1, 72, 388).

The said respondent, as plaintiff therein, applied for a preliminary injunction. His application was denied (R., 74). The trial judge held in his opinion:

> "Infringement has ceased and the responsibility of the defendant is unquestioned, and the recovery of damages, I think is sufficient protection for past infringement" (R., 73).

A motion was thereafter made by defendant, your petitioner, to transfer the action to the law side of the court (R., 75) on the ground that the denial of the plaintiff's application for an injunction, which was the only basis for equitable relief set up in the bill of complaint, was a determination that the plaintiff was not entitled to such relief when the action was commenced and, therefore, equity was without jurisdiction to proceed further therein. Defendant's said motion was denied (R., 79, 81, opinion reported in 6 F. (2d), 91).

The motion was renewed at the beginning of the trial and again denied (R., 388-390). The court proceeded to try the action in equity, although injunction, the only ground of equitable jurisdiction alleged by the plaintiff, had been denied. The patent was held valid

and infringed and a decree for plaintiff was entered (R., 562). The trial court's opinion (R., 550) is reported in 21 F. (d), 124.

An appeal from the decree was taken to the Circuit Court of Appeals for the Second Circuit (R., 564) and error was assigned for the refusal of the court to transfer the cause to the law side of the court (R., 568). Your petitioner contended earnestly in its briefs and upon the argument in the appellate court that the trial court's refusal to grant a preliminary injunction in the suit was in effect a determination that equity was without jurisdiction.

The circuit court of appeals affirmed the decree without opinion (R., 716-717); thereby, as your petitioner contends, establishing, as the law of this Circuit, that a party may invoke the equitable jurisdiction of the court although he has no ground for equitable relief, and that he may proceed in equity after it has been judicially determined that his sole claim of right to equitable relief is without foundation.

Your petitioner thereupon applied to said circuit court of appeals for a rehearing (R., 719) in order that the said court might either rule on this question or certify it up to the Supreme Court. But your petitioner's said application was denied (R., 725).

B.

A conflict of opinion is established by the decision in the instant case between the Circuit Courts of Appeals for the Sixth and Seventh Circuits on the one hand and the Circuit Court of Appeals for the Sec-

ond Circuit on the other. This conflict of opinion undoubtedly has its foundation in certain decisions of the Supreme Court of the United States.

(1) The Circuit Court of Appeals for the Second Circuit by its affirmance of the trial court's decree without opinion in the instant case has made that decision the rule of that circuit, to wit, that in an infringement suit where preliminary injunction is denied and the patent is about to expire so that no permanent injunction can be obtained and no other ground of equitable jurisdiction is alleged, nevertheless equity has jurisdiction to proceed further and take an accounting of profits and damages.

(2) The Circuit Courts of Appeals for the Sixth and Seventh Circuits hold directly to the contrary.

The object of this petition, therefore, is to have this Honorable Court adjudicate the rights of the parties and also settle this conflict of decision between the circuit courts of appeals of the various circuits.

The judgment or decree of the circuit court of appeals affirming the decree of the district court in the instant case was entered on the 27th day of February, 1928, and your petitioner's application for a rehearing was entertained and on the 23d day of March, 1928, denied. Your petitioner is of the opinion that the said judgment or decree is erroneous, and that this Honorable Court should require the case to be certified to it for review and determination under the act of Congress permitting such judgment to be certified for review; and your petitioner alleges that the circuit court of appeals erred in the following respects:

Error I.

That the Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the district court herein and in not holding that the district court was without jurisdiction to try and decide this case on the equity side of the court, after determining that the plaintiff was not entitled to a preliminary injunction; since the patent in suit was about to expire, when the suit was brought and no permanent injunction could, therefore, be obtained, and no other ground of equitable jurisdiction was alleged by the plaintiff in his bill of complaint, and the plaintiff did not either allege or prove that he did not have an adequate remedy at law.

Error II.

The said circuit court of appeals erred in not sending the case back to the district court for trial on the law side of the court where the plaintiff would have an adequate remedy in damages if it should be found that the patent in suit was valid and infringed by the defendant.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding said court to certify and send to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings in this case, to

the end that this cause may be reviewed and determined by this Court as provided by law; and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem appropriate and in conformity with law.

And your petitioner will ever pray.

Dated May 10, 1928.

RICE & ADAMS CORPORATION,
J. P. McKINLEY,
President.

FRED'K G. MITCHELL,
CHARLES J. STAPLES,
WILLIAM P. CONLEY,
WILLIAM DORAN CUSHMAN,
Of Counsel for Petitioner.

I hereby certify that I am of counsel for the petitioner herein, Rice & Adams Corporation; that in accordance with the request of said petitioner the foregoing petition has been prepared; and that the allegations contained in said petition are true, to the best of my knowledge and belief, and that said petition is, in my opinion, well founded in law and in fact, and should be granted.

Dated May 10, 1928.

CHARLES J. STAPLES.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 1012

RICE & ADAMS CORPORATION, PETITIONER,

vs.

HARRY D. LATHROP, RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion in the district court denying plaintiff's motion for preliminary injunction (R., 72) is not reported in the Federal Reporter.

The opinion in the district court denying defendant's motion to transfer cause to the law side of court (R., 79) is reported in Lathrop *vs.* Rice & Adams Corporation, 6 F. (2d), 91.

The opinion in the district court holding the patent in suit valid and infringed (R., 550) is reported in Lathrop *vs.* Rice & Adams Corporation, 21 F. (2d), 124.

No opinion was handed down in the circuit court of appeals (R., 716).

II.

Jurisdiction.

The date of the decree to be reviewed is February 27, 1928 (R., 716-717).

A petition for rehearing was denied March 23, 1928 (R., 725).

III.

Statement of the Case.

A full statement of the case has been given under heading "A" in the Petition, and in the interest of brevity the statement is not repeated at this point.

IV.

Specification of Errors.

1. The Circuit Court of Appeals for the Second Circuit erred in affirming the decree of the district court herein and in not holding that the district court was without jurisdiction to try and decide this case on the equity side of the court, after determining that the plaintiff was not entitled to a preliminary injunction; since the patent in suit was about to expire when the suit was brought, and no permanent injunction could, therefore, be obtained, and no other ground of equi-

table jurisdiction was alleged by the plaintiff in his bill of complaint, and the plaintiff did not either allege or prove that he did not have an adequate remedy at law.

2. The Circuit Court of Appeals for the Second Circuit erred in not sending the case back to the district court for trial on the law side of the court, where the plaintiff would have an adequate remedy in damages if it should be found that the patent in suit was valid and infringed by the defendant.

V.

Summary of Argument.

The decision below is contrary to and in conflict with prior Federal court decisions.

ARGUMENT.

The courts have frequently called attention to the conflict of opinion in the various circuits on the question here involved, to wit, whether equity may retain jurisdiction for the purpose of taking an account of damages and profits after injunction has been denied. As pointed out in LeRoy *v.* DeVry Corporation, 16 F. (2d) 18, at page 20, this conflict is in some degree occasioned by the conflict which is thought to exist between Root *vs.* Railway Co., 105 U. S., 189, and Clark *vs.* Wooster, 119 U. S., 322. This conflict was referred to by Judge Holt in the Southern District of New York in Diamond Co. *vs.* Seus, 159 F. 497, and by Judge Lacombe in the Circuit Court of Appeals, Second Circuit in Tompkins *vs.* International Paper Co.,

183 F. 773; the decisions in the last mentioned cases holding that equity is without jurisdiction of an infringement suit brought when the patent is about to expire and in which no special reasons are shown why the remedy at law is not adequate.

In the instant case the plaintiff's bill does not allege, nor are there any proofs in the record, that any special reasons exist why the remedy at law herein is not adequate; nor does the said bill even allege that the plaintiff has not an adequate remedy at law.

In Diamond Co. *vs.* Seus (*supra*) Judge Holt cited a number of Supreme Court cases holding that the question was one of discretion, and other decisions of the same court holding that when a patent is about to expire and there are no special circumstances calling for the exercise of equitable jurisdiction, and it is apparent that the prayer for injunction is a mere form to support the jurisdiction, the court has no equitable jurisdiction. He said further, at page 498:

> "There are various decisions in the circuit courts of appeals and in the circuit courts, some of which support one view of the case and some the other."

Judge Lacombe, in the Tompkins case (*supra*) also cites a number of decisions illustrating the same lack of harmony.

Among the cases holding that equity will not entertain jurisdiction for the purpose of an accounting merely are:

> Woodmanse *vs.* Williams, 68 F., 489;
> Kennicott *vs.* Bain, 185 F., 520.

The decision in Woodmanse *vs.* Williams, in the Circuit Court of Appeals, Sixth Circuit, wherein Mr. Chief Justice Taft, then a member of that court, participated, and Judge Lurton wrote the opinion, held at page 492:

> "It must appear that the legal remedy at law is inadequate, and if the case is one in which equitable relief by injunction is inappropriate, as where the patent has expired, or where the circumstances are such as to justify a court in refusing equitable relief, the suit will not be entertained for the mere purpose of an account of past damages and profits."

And in Kennicott *vs.* Bain the Circuit Court of Appeals, Seventh Circuit, held that where, as in the instant case, infringement had ceased, an injunction was properly refused and the bill dismissed, and whatever rights were left to the plaintiff must be asserted in a suit at law for damages, no ground existing for a bill in equity.

The other view—that the exercise of jurisdiction is discretionary—appears to be supported by a dictum in Sly *vs.* Central Iron Works, 201 F., 683, in the Circuit Court of Appeals, Seventh Circuit, which is followed by Stromberg Co. *vs.* Holley Bros. Co., 260 F., 220, in the Eastern District of Michigan, and by the district court in the instant case (6 F. (2d), 91), and the Circuit Court of Appeals, Second Circuit, by affirming the district court's decree herein.

We had supposed that the question was set at rest in the Second Circuit by the decision in LeRoy *vs.* De-

Vry Corporation, 16 F. (2d), 18, in accordance with the rule laid down in the above cited cases of Woodmanse *vs.* Williams in the Sixth Circuit, Kennicott *vs.* Bain in the Seventh Circuit, and Tompkins *vs.* International Paper Co., in the Second Circuit. See also Tompkins *vs.* St. Regis Co., 236 F., 221, in the Second Circuit. LeRoy *vs.* DeVry differs from the instant case, in that in the LeRoy case no preliminary injunction was applied for, but the court said that none was justified on the record. If such an injunction had been applied for it must have been denied, and then that case would have been on all fours with the instant case. Therefore, the LeRoy case, in which the circuit court of appeals directed a transfer to the law side of the court, was decided in harmony with the above-mentioned cases in the Second Circuit and those in the Sixth and Seventh Circuits, while the decision in the instant case is in direct conflict therewith.

Under Rule 35 of the Revised Rules of this Honorable Court, adopted June 8, 1925, and effective July 1, 1925, we understand that a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and that where there are special and important reasons therefor, this Court will consider taking a case under review where a circuit court of appeals has rendered a decision in conflict with a decision of another circuit court of appeals on the same matter.

As we have shown, the decision of the Circuit Court of Appeals, Second Circuit, in the instant case affirming the decree of the district court, is clearly in conflict not only with the decisions of circuit courts of

appeals in other circuits, but there is a lack of uniformity even in the same circuit.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the question of jurisdiction involved in the conflicting decisions referred to herein may be authentically settled for all the circuits, thereby making a distinct saving of time and expense to courts, litigants and members of the bar; and that to such an end a writ of certiorari should be granted and this Honorable Court should review the decision of the said circuit court of appeals, that justice may be done to this petitioner.

FRED'K G. MITCHELL,
CHARLES J. STAPLES,
WILLIAM P. CONLEY,
WILLIAM DORAN CUSHMAN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 155

RICE & ADAMS CORPORATION, Petitioner

vs.

HARRY D. LATHROP

SUPPLEMENTAL BRIEF IN SUPPORT OF CERTIORARI.

This brief is supplemental to the one filed with the petition for certiorari herein. In that brief is set forth a reference to the opinions delivered in the Courts below, the grounds of jurisdiction in this Court, a brief statement of the case, specification of errors and summary of argument. In the interest of brevity the same are not repeated here.

ARGUMENT

On the 21st day of January, 1925, Harry D. Lathrop, Respondent, filed his Bill of Complaint in

the United States District Court for the Western District of New York against Rice & Adams Corporation, Petitioner, for infringement of Letters Patent No. 880,713 originally granted to James R. Blair on March 3, 1908. The patented device was a machine for washing milk cans, with an endless chain carrier upon which the inverted cans were carried to and over the washing jets and a drip pan at the feed end of the machine underneath for catching the drippings from the cans. (R. 392-4).

The patent had forty-one days to run. Two days after the suit was commenced, motion for a preliminary injunction was filed. On February 10, 1925, the District Judge handed down an opinion (not reported, R. 72) denying the motion, in which he said:

> "Infringement has ceased and the responsibility of the defendant is unquestioned and the recovery of damages, I think, is sufficient protection for past infringements."

Plaintiff did not appeal from the order denying a preliminary injunction, therefore plaintiff acquiesced in the said order.

The only equitable relief prayed for was injunction. When that was denied by the Court the only relief remaining was an accounting for profits and damages,—a purely legal remedy.

Section 267 of the Judicial Code provides that:

> "Suits in equity shall not be sustained in any Court of the United States in any case where a plain, adequate and complete remedy may be had at law."

And Rule 22 of the Equity Rules of Practice:

> "If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the Court it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential."

The defendant therefore on March 3, 1925, before filing its answer, obtained an order to show cause why the action should not be transferred to the law side of the Court in compliance with Section 267 of the Judicial Code and Equity Rule 22 (R 75). Defendant urged that by the Court's denial of the plaintiff's application for a preliminary injunction, on the express grounds that infringement had ceased and the recovery of damages was sufficient protection for past infringement, a judicial determination had been made, to-wit; that the plaintiff was not entitled to equity relief when the action was commenced and, therefore, equity was without jurisdiction to proceed further in the case.

The defendant's motion was denied (R. 79, 81 and 6 F 2d 91). It was renewed at the opening of the trial and again denied. (R. 388-90). The case

was tried in equity and the patent was held valid and infringed. (R. 550-62; 21 F. 2d. 124).

On appeal to the Circuit Court of Appeals for the Second Circuit, the refusal of the District Court to transfer the cause to the law side of the Court was assigned as error. (R. 568). The point was urged in the appellant's brief and upon the argument of the appeal, but the Circuit Court of Appeals affirmed the decree of the trial court without opinion (R. 717-18) and a rehearing was thereafter denied. (R. 722). Certiorari was allowed by this court by an order filed October 8, 1928 (R. 722).

POINT I.

A CONFLICT OF OPINION EXISTS IN THE CIRCUIT COURTS OF APPEALS AND IN VARIOUS OTHER COURTS IN REGARD TO THE QUESTION OF EQUITY JURISDICTION WHICH IS INVOLVED IN THIS CASE.

The question here involved is whether equity may retain jurisdiction of a patent infringement suit brought when a patent is about to expire, for the purpose of taking an account of damages and profits where preliminary injunction has been denied, the bill alleges no other ground of equitable relief and contains no allegation that there is no adequate remedy at law.

The Courts have frequently called attention to a conflict of opinion in the various Circuits as to whether equity has jurisdiction in patent in-

fringement suits brought on the eve of patent expiration.

In the recent case of Leroy vs. DeVry Corp. 16 F. 2d 18, where a bill for infringement was filed one day before the patent sued upon had expired and no application for an injunction pendente lite was made, the Circuit Court of Appeals for the Second Circuit, Judge Hough writing the opinion, said, at page 20:

> "We avoid discussion of the question whether, after patent expiration, or upon the very eve of expiration, any injunction at all can issue, because it has been thought that there is a contradiction on this point between Root vs. Railway Co., 105 U. S. 189 and cases following it and Clark vs. Wooster, 119 U. S. 322 and some subsequent cases following that decision. See them collated by Holt, J. in Diamond, etc. Co. vs. Seus, (C. C.) 159 F. 497. It is enough for our present purposes that * * * no case justifies any injunction on such a record as this."

Judge Hough said, at page 19:

> "Against a general demurrer we held in Tompkins vs. International etc. Co. 183 F. 773 that there was jurisdiction in equity to entertain,—i. e. consider—a bill filed three days before expiration of patent. But it does not follow that because jurisdiction

exists an injunction should issue, much less that an injunction must issue."

Evidently Judge Hough had in mind jurisdiction to consider the bill and ascertain whether or not there was any ground of equitable jurisdiction. Finding that injunction was not justified in the DeVry case and that there was neither averment nor proof that plaintiff's remedy at law was inadequate, the Court ordered the case transferred to the law side.

The decisions in Root vs. Railway Co., and Clark vs. Wooster, where the conflict of opinion on this point is supposed to have originated, were briefly as follows:

In Root vs. Railway Co., suit for infringement of a patent was commenced five years after the patent had expired. On demurrer in the Court below the bill was dismissed. The Supreme Court on appeal said that no injunction was obtainable and no circumstances appeared which would render an action at law inadequate, and held that a bill in equity for a naked account of profits and damages could not be sustained.

The patent in Clark vs. Wooster had fifteen days to run when suit for infringement was commenced. Whether a preliminary injunction was applied for or not did not appear and it was held that inasmuch as there was time to apply for and obtain a preliminary injunction before the patent expired, jurisdiction had attached and the decree of the Court below for damages was affirmed.

The decision of the Supreme Court in Clark vs. Wooster, has been relied upon as an authority adverse to the petitioner's contention, but there are two important points of distinction between the facts in that case and those in the instant case. First, in Clark vs. Wooster, it did not appear whether application for an injunction was made or not. In the instant case injunction was applied for and denied immediately after suit was commenced. Second, in the Clark case the Court said, at page 326:

> "As the Court had jurisdiction at the inception of the suit, even though upon a narrow ground, yet, as the defendants did not ask the dismissal of the bill on the ground of want of jurisdiction, we should be very reluctant, if we had the power, now, on an appeal, after the case has been tried and determined, to reverse the decree."

The practice now would be not to dismiss the bill but to transfer the case to the law side of the Court under Equity Rule 22. In the instant case the defendant promptly moved for such a transfer and the motion was renewed and the point was urged at every opportunity thereafter. We submit therefore that the decision in Clark vs. Wooster is not, in fact and under the circumstances of that case, adverse to the petitioner.

In the case of Diamond Co. vs. Seus, 159 F. 497, (Circ. Ct. S. D. of N. Y.) a patent was sued on that

had only twelve days to run. The defendant demurred to the bill for want of jurisdiction, because filed so shortly before the patent expired and because there was an adequate remedy at law. No preliminary injunction was issued or applied for. The demurrer was sustained and the bill was dismissed. Holt J. said, at page 498:

> "It is well settled that the ground of jurisdiction in an equity suit for the infringement of a patent is the right to an injunction, that the remedy of an accounting for the recovery of profits or damages is incidental, and that a bill in equity will not lie after the expiration of a patent simply for an accounting and the recovery of damages or profits. It is held that the patentee, under such circumstances, has an adequate remedy at law. Root v. Railway Co. 105 U. S. 189, 26 L. Ed. 975. Upon the question whether the same rule applies to an equity suit brought just before the expiration of a patent, the cases seem to be somewhat in conflict. Some appear to hold that it is a question of discretion with the Court whether to take jurisdiction or not, and in various cases jurisdiction has been taken. Clark vs. Wooster, 119 U. S. 322, 7 Sup. Ct. 217, 30 L. Ed. 392; Beedle vs. Bennett, 122 U. S. 71, 7 Sup. Ct. 1090, 30 L. Ed. 1074; Busch vs. Jones, 184 U. S. 598, 22 Sup. Ct. 511, 46 L. Ed. 707. Other cases hold that, when it clearly appears that there are no special circumstances in the case calling

for the exercise of equitable jurisdiction, and the time which the patent has to run when the bill is filed is so brief that it is apparent that the prayer for an injunction is a mere form to support the jurisdiction, and that the real object of the action is an accounting to recover profits or damages, the Court has no jurisdiction. Root vs. Railway Co., 105 U. S. 189, 26 L. Ed. 975; Hayward vs. Andrews, 106 U. S. 672, 1 Sup. Ct. 544, 27 L. Ed. 271; Keyes vs. Eureka Con. Co., 158 U. S. 150, 15 Sup. Ct. 772, 39 L. Ed. 929.

There are various decisions in the Circuit Courts of Appeal and in the Circuit Courts, some of which support one view of the case and some the other."

The same conflict of decision is referred to by Judge Lacombe in Tompkins vs International Paper Co., 183 F. 773 (C. C. A. 2nd Circ.) to which attention was called in the DeVry case. There a bill for infringement filed three days before expiration of patent was demurred to as without equity, because filed so shortly before the patent expired. From a decree sustaining the demurrer and dismissing the bill, the plaintiff appealed. After citing Root vs Railway and Clark vs Wooster, the Court said, at page 774:

"Although there was not sufficient time to give four days' notice of motion for injunction, it was within the power of the

court upon the filing of the bill to issue an order to show cause returnable in some shorter time and grant an ad interim restraining order, which would have been in substance and effect an injunction. It seems immaterial to inquire whether or not complainant could have sustained an application for injunction or restraining order on the merits. If before the expiration of the patent he is actually in court with a bill upon which he could ask for an immediate injunction, and there was time enough to make such injunction operative, if it were granted, it is not easy to see why, under the decision in Clark vs Wooster, the court would not be entitled to take jurisdiction.

Nevertheless there are authorities the other way. Miller vs. Schwarner (C. C.) 130 Fed. 561; American Cable Co vs. Chicago (C.C.) 41 Fed. 522; Bragg vs. Hartford (C.C.) 56 Fed. 292; Davis vs. Smith (C.C.) 19 Fed. 823; Diamond Co. vs. Seus (C. C.) 159 Fed. 497. We prefer therefore, to rest our decision on the other proposition contended for by the appellant, viz.: That complainant has not a plain, adequate and complete remedy at law."

And the decree of the lower court sustaining the demurrer was reversed, because of special circumstances showing that there was no adequate remedy at law.

See also Tompkins vs St. Regis Paper Co., 236

F. 221, (C.C.A. 2nd Circ.) where the patent in suit had expired before the suit was commenced and the Court said, at page 223:

> "Where a suit is brought upon a patent which has expired, a Court of Equity ordinarily has no jurisdiction. An injunction does not issue in such cases and if the suit is one to compel an infringer to account for the profits realized during the period of infringement and to pay damages, there is ordinarily a complete remedy at law." Citing Root vs. Railway Co.

But it was found that there were special circumstances in that case, as in the case of Tompkins vs. International Paper Co. above cited, which gave the Court jurisdiction in equity.

In the following patent infringement cases the Courts have held that where the circumstances are such as to justify a Court in refusing equitable relief, equity will not entertain jurisdiction for the purpose of granting incidental relief;—

> Woodmanse vs. Williams 68 F. 489 (C.C.A. 6th Circ).
>
> Kennicott vs. Bain, 185 F. 520 (C. C. A, 7th Circ).

In Woodmanse vs. Williams, no prelimnary injunction was prayed for or allowed and when the final hearing was had, plaintiff's patent had expired. The Court held at page 492:

> "The ground upon which a Court of Equity will take cognizance of a suit for an infringement of a patent is the relief through an injunction. There is nothing so peculiar to a suit for damages and profits for infringement of a patent as will, independently of some recognized ground of equitable jurisdiction, justify a court of chancery in assuming jurisdiction. It must appear that the legal remedy at law is inadequate, and if the case is one in which equitable relief by injunction is inappropriate, as where the patent has expired or where the circumstances are such as to justify a court in refusing equitable relief, the suit will not be entertained for the mere purpose of an account of past damages and profits." Citing the Root vs. Railway and Clark vs. Wooster cases.

The decree of the Court below dismissing the suit was affirmed.

In Kennicott vs. Bain, the bill was to restrain infringement of Letters Patent and it does not appear whether a preliminary injunction was applied for or not. From a decree for the defendant, the complainant appealed. The Appellate Court said that when suit was commenced, infringement had ceased; that injunction was not an appropriate remedy in such cases; and whatever rights were left to the appellant must be asserted in a suit at law for damages since no ground existed for the bill in equity. The decree

of the Court below dismissing the bill was affirmed.

We have, however, been unable to find a patent infringement case in which the question of jurisdiction has arisen as in the instant case after a preliminary injunction was applied for and denied.

In the Woodmanse case the Court said, as quoted above, that there is nothing so peculiar to a suit for damages and profits for infringement of a patent, as will, independently of some recognized ground of equitable jurisdiction, justify a court of chancery in assuming jurisdiction.

In a number of suits in equity, other than patent infringement cases, it has been held that where injunction is denied and no other ground of equitable jurisdiction exists, Courts of Equity are without jurisdiction to proceed further.

> Van Raalt vs. Schneck, 159 F. 248, (E. D. of Wis.)
>
> American Falls Co. vs. Standard Co., 248 F. 487 (C. C. A. 8th Circ.)
>
> Tubular Co. vs. Mt. Vernon Co., 2 F. 2d 982. (E. D. of Ill.)

Van Raalt vs Schneck was a suit in equity for infringement of a trade symbol. When defendant's right to use the symbol was disputed by complainant, the defendant promptly renounced his claim to it and discontinued using it. Never-

theless suit was brought against him for injunction and an accounting. The Court refused the injunction, because it was unable to see why complainant did not have "everything that an injunction could confer." The complainant then urged that although denying the injunction, equity would retain jurisdiction for the purpose of an accounting, but the Court held that this contention had been set at rest in Root vs. Railway Co. where the Supreme Court said:

> "Our conclusion is that a bill in equity for a naked accounting of profits and damages against an infringer of a patent cannot be sustained."

The Court further held that if complainant suffered damage there was a complete and adequate remedy at law. The bill was thereupon dismissed without prejudice to the complainant to institute a suit at law for damages, if so advised.

In American Falls Co. vs. Standard Co. plaintiff a brokerage company, sued defendant, a milling concern, claiming that the plaintiff had a contract for the exclusive sale of defendant's products, which defendant had violated by selling directly to plaintiff's customers, and prayed for injunction and damages. Injunction was denied and damages were awarded. Upon appeal, the decree of the lower court was affirmed as to the denial of the injunction but otherwise reversed with directions to transfer the trial of the issues relating to damages to the law side of the court, in ac-

cordance with Equity Rule 22 and Section 267 of the Judicial Code.

Tubular Heating Co. vs. Mt. Vernon Co., like the Van Raalt case was a suit to restrain use of a trade mark and for an accounting for damages. A temporary injunction was granted and plaintiff obtained a citation for defendants to show cause why they should not be held in contempt for violation of the injunction. Upon a showing by the defendants that use of the trade mark had been abandoned by them so that when the bill was filed there was no infringement or threat of infringement, the Court dissolved the injunction and dismissed the bill for want of equity.

We have then, in addition to Root vs. Railway Co. and the other Supreme Court cases cited by Judge Holt in Diamond Co. vs. Seus, a number of Circuit Court of Appeals decisions holding or sustaining the view that where a patent has expired before suit is commenced, or where the circumstances are such as to justify a Court in refusing to grant an injunction, or where injunction is denied, and there are no other grounds of equitable relief, equity is without jurisdiction to proceed further.

Tompkins vs. St. Regis, 236 F. 221 (C.C. A. 2nd Circ).

Tompkins vs. Int. Paper Co. 183 F. 773 (C. C. A. 2nd Circ.).

Leroy vs. DeVry Corp. 16 F. 2d 18 (C. C. A. 2nd Circ).

American Falls Co. vs. Standard Co. 248 F. 487, (C.C.A. 8th Circ.).

Woodmanse vs. Williams, 68 F. 489 (C.C. A. 6th Circ.)

Kennicott vs. Bain, 185 F. 520 (C.C.A. 7th Circ.)

On the other hand we have Circuit Court of Appeals decisions holding that where a bill is filed in time to obtain preliminary injunction, even though none is applied for, equity may proceed to grant incidental relief and the question is not one of jurisdiction but of discretion in the exercise of jurisdiction.

Sly vs. Central, 201 F. 683 (C.C.A. 7th Circ.)

Standard Co. vs. Magrane, 259 F. 793 (C. C.A. 1st Circ)

In this latter class of decisions no exception is made of those cases in which, as in the DeVry and Woodmanse cases and the instant case, the circumstances are such that injunction or other equitable relief would be inappropriate.

In the case at bar, the trial court quoted from the Sly case as follows:

"If, however, facts existed when suit was commenced which might, in any view,

> sustain an injunction, the question is not then one of jurisdiction but one of discretion in the exercise of jurisdiction." (R. 80 and 6 F. 2d 91).

In the Sly case, however, two patents were involved, one of which was about to expire while the other had several years to run; from which it is evident that the Court had a better reason for retaining equity jurisdiction than the one referred to in the foregoing quotation.

In Standard Co. vs. Magrane, the Circuit Court of Appeals for the First Circuit, upheld the contention of the plaintiff therein, in the following words, at page 795:

> "But the plaintiff insists that the fact that relief by injunction has now become inappropriate by reason of lapse of time, does not warrant the Court in refusing to retain jurisdiction in equity for the purpose of granting any appropriate relief though it be only for the assessment of damages."

The Court, however, added:

> "Assuming for the moment that the contract and all the stipulations therof are valid, the great weight of authority is in favor of the plaintiff's proposition that it was entitled to an injunction against the breach of the negative covenant."

In view of the circumstances in the Sly and Magrane cases, indicating the existence of a right to injunctive relief therein, it may be conceded that in those cases there was a basis for retaining jurisdiction in equity; but we have not been able to find a decision in any case, except the one at bar, holding that where a Court has denied relief by injunction and declared that the plaintiff was not entitled to such relief, and where no other equitable relief is sought, nevertheless the court may proceed in equity and grant other incidental relief.

By its affirmance of the District Court's opinion in the instant case, the Circuit Court of Appeals for the Second Circuit has established a rule which is at variance with its former decisions in Leroy vs. DeVry, 16 F. 2d 18; Tompkins vs. Int. Paper Co., 183 F. 773 and Tompkins vs. St. Regis Paper Co., 236 F. 221, and with those of the Circuit Courts of Appeals for the Eighth Circuit in American Falls vs. Standard Co., 248 F. 487, for the Sixth Circuit in Woodmanse vs. Williams, 68 F. 489, and for the Seventh Circuit in Kennicott vs. Bain, 185 F. 520.

CONCLUSION

It is respectfully submitted, therefore, that the confusion as to when Courts may or may not proceed in equity in patent infringement cases, which has heretofore existed and to which the Courts have so frequently referred, has been increased and intensified by the decision of the Dis-

trict Court, as affirmed by the Circuit Court of Appeals in the instant case. The great weight of authority sustains the view that when a bill is filed it must at least appear that the plaintiff is entitled to an injunction or some other form of equitable relief; and when it has been judicially determined that the plaintiff is not entitled to an injunction and no other equitable relief is prayed for in the bill, and particularly where, as in the instant case, there is no allegation in the bill to the effect that legal relief is inadequate, it is the duty of the trial court upon motion to transfer the case to the law side of the court.

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FILED
JUL 16 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of The United States

October Term, A. D. 1927.

No. [redacted] 155

RICE & ADAMS CORPORATION,

Petitioner,

v.

HARRY D. LATHROP,

Respondent.

BRIEF BY RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOSHUA R. H. POTTS,
Counsel for Respondent.

EUGENE VINCENT CLARKE,
HOWARD S. LAUGHLIN,
Of Counsel.

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IN THE

Supreme Court of The United States

October Term, A. D. 1927.

No. 1012.

RICE & ADAMS CORPORATION,

Petitioner,

v.

HARRY D. LATHROP,

Respondent.

BRIEF BY RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

Respondent prays that the petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit be denied, and respectfully shows to this Honorable Court:

I.

Supplementing petitioner's statement of the case under heading A of the petition, for the purpose of correcting

certain inaccuracies and omissions, petitioner makes no mention of the fact that the Blair patent No. 880,713 in suit was the subject of prior litigation between respondent and the Bowman Dairy Company in the District Court for the Northern District of Illinois, Eastern Division (R. 12) in which the patent in suit was sustained as valid and infringed. That suit was brought against a user of a machine manufactured and sold by the present petitioner as manufacturer. In that suit petitioner and the Bowman Dairy Company were joined as parties defendant, but although the bill was dismissed as to petitioner on the ground that it maintained no established place in business in the Illinois District, the subsequent defense of the suit was conducted openly and avowedly by the petitioner herein, Rice & Adams Corporation, with the full knowledge of respondent and his counsel, (R. 176, 183, 415 et. seq.).

After the entry of a final decree by his Honor Judge Carpenter in the Illinois suit (R. 12) following a full and bitterly contested suit on the merits, respondent filed his bill of complaint in the instant suit on January 21, 1925 (R. 1), forty-two days before the expiration of the patent in suit (R. 606), and alleged, *inter alia (R. 4)* that the present petitioner had openly and to the knowledge of respondent conducted the defense in the Illinois suit against the Bowman Dairy Company, had paid all expenses of said defense, and had paid the judgment rendered in the final decree, all to the knowledge of respondent, wherefore said final decree entered in the Illinois suit became *res adjudicata* against the present petitioner. Respondent promptly moved for a preliminary injunction, papers in support and opposition were filed, the case argued by counsel for both parties, and on February 9, 1925, his

Honor Judge Hazel of the District Court for the Western District of New York rendered an opinion in denial of the motion for injunction, citing as an additional ground therefore, not mentioned in the present petition, that infringement was strongly denied and that patents other than those before the Court in the Illinois case were urged as anticipatory (R. 73). Thus, in complete harmony with controlling decisions by this Court hereinafter cited, not only was there time after the filing of the bill within which to present a motion for preliminary injunction, but such motion was presented, a hearing was had thereon and the trial Judge in the exercise of his sound discretion handed down an opinion denying the motion, all before the expiration of the patent in suit. It is apparently petitioner's contention that although the trial court might have had equity jurisdiction to entertain the motion for preliminary injunction, that jurisdiction was immediately lost upon the denial of the preliminary injunction motion, but this contention is directly contrary to ruling decisions by this Court and the fundamental principle that equity having acquired jurisdiction in the first instance, jurisdiction will be retained until a final determination of the controversy.

Immediately thereafter petitioner filed a motion to transfer the cause from the equity to the law side of the Court (R. 75) but this motion was denied by his Honor Judge Hazel (R. 79) in an opinion appearing in *6 F. (2d) 91*, in which his Honor comments upon the prior decree in the Illinois District Court against a customer of petitioner wherein the patent in suit was held valid and infringed and it appeared that petitioner was in privity, and his Honor concluded that in the circumstances respondent had a right at the time the suit was instituted

to commence in equity and assert his right to an injunction. Moreover his Honor held that in addition to the prayer for injunctive relief, the bill sought an accounting for profits and damages as an additional ground for equitable relief, although in the present petition petitioner asserts that an application for an injunction was the only basis for equitable relief set up in the bill. In conclusion, his Honor Judge Hazel held that the relief sought in the bill was grantable and was only denied in the exercise of the Court's discretion and that the request of transfer to the law side must be denied.

The motion to transfer was renewed by petitioner at the beginning of the trial and again denied (R. 388); the case was heard on the equity side and the patent held valid and infringed in a decree for respondent (R. 562) entered pursuant to the trial court's opinion (R. 550) reported in *21 F. (2d) 124*.

The trial court in its opinion (R. 553) declined to apply the doctrine of *res adjudicata* or privity in connection with petitioner's participation in the previous Illinois litigation on the sole ground that it had not been sufficiently shown that the petitioner controlled the right of appeal in the Illinois case, and therefore, although the decision was a complete victory for respondent on the validity and infringement issues, respondent strenuously contended on the appeal, both in brief and argument, that the doctrine of *res adjudicata* was applicable under the facts and circumstances and that the present petitioner was bound by the decree in the Illinois suit. The Circuit Court of appeals for the Second Circuit affirmed the lower Court's decree without opinion (R. 716), and thus the importance of the *res adjudicata* issue lies in the fact that full proofs

having been taken on this issue and the matter thoroughly argued in both the trial and Appellate Court, the affirmance by the Court of Appeals of the decree in favor of respondent might well have been predicated solely upon a decision in favor of respondent upon the *res adjudicata* issue, inasmuch as in basing its affirmance upon that ground no revision of the decree (R. 562) would have been necessary. This contention is supported by the authority of this Court hereinafter cited and if the affirmance was upon that ground (and there is nothing in the record indicating the contrary) the present petition is without basis inasmuch as the grounds now relied upon as a basis for seeking a review by this Court were totally absent in the Illinois suit. Petitioner then applied to the Court of Appeals for a rehearing on practically the identical grounds of the present petition and this application was denied (R. 725).

II.

SUMMARY OF ARGUMENT.

1. There is no real conflict between different courts of appeal on any issue here involved, but the conclusions reached in each particular case necessarily depended upon the particular facts and circumstances involved. The cases cited by petitioner are clearly reconcilable as following controlling principles announced by this Court:

Clark v. Wooster, 119 U. S. 322.
Beedle v. Bennet, 122 U. S. 71.
Busch v. Jones, 184 U. S. 598.
Woodmanse v. Williams, 68 F. 489.
Kennicott v. Bain, 185 F. 520.
Sly v. Central, 201 F. 683.
Stromberg Co. v. Holly Co., 260 F. 220.
LeRoy v. DeVry, 16 F. (2d) 18.
Tompkins v. International, 183 F. 773.
Tompkins v. St. Regis, 236 F. 221.

2. Where the rules of the trial Court permit time after the filing of the bill and before expiration of the patent within which to apply for a preliminary injunction, the Court may assume and retain equity jurisdiction even though the application for injunction is denied.

Clark v. Wooster, 119 U. S. 322.
Lathrop v. Rice & Adams, 6 F. (2d) 91.
LeRoy v. DeVry, 16 F. (2d) 18.
Stromberg v. Holly, 260 Fed. 220.

3. The retention of equity jurisdiction or dismissal of the bill where filed shortly before the expiration of the patent, is a matter purely within the discretion of the trial Court and the exercise of that discretion will not be disturbed unless clearly illegal.

Clark v. Wooster, 119 U. S. 322.
Tompkins v. International, 183 Fed. 773.
Lathrop v. Rice & Adams, 6 Fed. (2d) 91.
Sly v. Central, 201 Fed. 683.

4. A decree may be affirmed where the record supports the decree although the affirmance may be upon different grounds than those relied upon by the trial Court.

Murdock v. City of Memphis, 87 U. S. 590.

III.

ARGUMENT.

1. It is submitted that the principle of law involved in this proceeding is governed by the case of *Clark v. Wooster, 119 U. S. 322*, in which the bill of complaint was filed fifteen days before the expiration of the patent in suit. The principle announced in this decision has not been modified in any manner by this Court and the statement by Mr. Justice Bradley appears at page 324 as follows:

> "As to the first point, the bill does not show any special ground for equitable relief, except the prayer for an injunction. To this the complainant was entitled, even for the short time the patent had to run, unless the court had deemed it improper to grant it. If, by the course of the court, no injunction could have been obtained in that time, the bill could very properly have been dismissed, and ought to have been dismissed, and ought to have been. But by the rules of the court in which the suit was brought, only four days' notice of application for an injunction was required. Whether one was applied for does not appear. But the court had jurisdiction of the case, and could retain the bill, if, in its discretion, it saw fit to do so, which it did. It might have dismissed the bill, if it had deemed it inexpedient to grant an injunction; but that was a matter in its own sound discretion, and with that discretion it is not our province to interfere, unless it was exercised in a manner clearly illegal. We see no illegality in the manner of its exercise in this case. The jurisdiction had attached, and although, after it attached, the principal ground for issuing an injunction may have ceased to exist by the expiration of the patent, yet

there might be other grounds for the writ arising from the possession by the defendants of folding guides illegally made or procured whilst the patent was in force. The general allegations of the bill were sufficiently comprehensive to meet such a case. But even without that, if the case was one for equitable relief when the suit was instituted, the mere fact that the ground for such relief expired by the expiration of the patent, would not take away the jurisdiction, and preclude the court from proceeding to grant the incidental relief which belongs to cases of that sort. This has often been done in patent causes, and a large number of cases may be cited to that effect; and there is nothing in the decision in *Root v. Railway Co., 105 U. S. 189*, to the contrary. *Cotton Tie Co. v. Simmons, 106 U. S. 89; Lake Shore etc. Railway v. Car-Brake Co., 110 U. S. 229; Consolidated Valve Co. v. Crosby Valve Co., 113 U. S. 157; Thomson v. Wooster, 114 U. S. 104.*"

The foregoing principle was followed by this Court and reiterated in *Beedle v. Bennet, 122 U. S. 71*, and *Busch v. Jones, 184 U. S. 598.*

In the instant suit the bill of complaint (R. 3) alleges irreparable damage, that continuing infringement is threatened (R. 4), and further (R. 6) the bill prays for an accounting, a provisional and perpetual injunction, and such further equitable relief as the case may require. Thus under the above decision it is submitted that in the instant case the prayer for injunctive relief would have been sufficient, but in addition the bill contained the usual prayer for an accounting of profits and damages.

The petitioner represents that a conflict on the point of law involved exists between decisions in the Sixth and Seventh Circuit and decisions in the Second Circuit, but

an analysis of the decisions relied upon shows that no real conflict is present and that, as is often the case in equity, other controlling equitable principles were involved. *Woodmanse v. Williams, 68 Fed. 489 (C. C. A. 6)* is an exceptional case. The trial Court dismissed the bill on the ground of laches and plaintiff's long-standing acquiescence over a period of fourteen years in defendant's infringement. This was the controlling ground for the affirmance by the Court of Appeals and the comment with reference to refusing injunctive relief was merely corollary to the principal holding that because of gross laches plaintiff was disentitled to any equitable relief. In the recent case of *Stromberg Co. v. Holly Co., 260 Fed. 220*, Eastern District of Michigan, defendant moved to dismiss on seven grounds, one of which was that the patent in suit expired seventeen days after the filing of the bill. His Honor Judge Tuttle cited *Clark v. Wooster, supra*, and tersely reiterated the principle as follows:

> "As there was ample time, according to the rules of this court after the filing of the bill in the present case, to obtain a temporary injunction if a motion therefor had been made, I have no doubt that this court has acquired jurisdiction over the subject-matter of the suit, and that it ought to now retain such jurisdiction, and make such disposition of the case after the final hearing as the facts and the law shall require."

Thus the most recent Sixth Circuit decision cited by petitioner is clearly in harmony with the rule followed in the present case. The case of *Kennicott v. Bain, 185 F. 520 (C. C. A. 7th)* was likewise an exceptional case in that the bill was directed against a single specific piece of machinery, which was dismantled three months before suit was brought, and the relationship of the parties

and exchange of correspondence had an important bearing upon the Court's affirmance of a dismissal of the bill. The date of expiration of the patent involved is not mentioned in the decision, and the case is not considered in point upon the question here involved. When the case of *Sly Mfg. Co. v. Central, 201 Fed. 683,* came before the Seventh Circuit Court of Appeals, a dismissal by the lower Court was reversed on the precise point here involved, and the Court followed *Clark v. Wooster, supra,* in holding that where facts existed when the suit was commenced, which might sustain an injunction, the question is not one of jurisdiction, but one of discretion in the exercise of jurisdiction. This decision removes any doubt in connection with any question of lack of harmony between the Second and Seventh Circuits that might have existed because of the previous decision in *Kennicott v. Bain.* In the opinion of His Honor Judge Hazel in the instant suit, denying petitioner's motion to transfer to the law side (R. 79), reported in *6 F. (2d) 91,* the Seventh Circuit case of *Sly v. Central, supra,* is cited and quoted with approval upon this precise point of law, and *Clark v. Wooster, supra,* is likewise cited. Apparently *LeRoy v. DeVry, 16 F. (2d) 18,* Second Circuit Court of Appeals, is petitioner's principal reliance, as establishing a color of discord; but again, this case was exceptional. The bill was filed on the day before the patent expired. Therefore, there could have been no opportunity for a hearing on a preliminary injunction motion before the expiration of the patent, and this clearly distinguishes the case from the principle announced in *Clark v. Wooster, supra,* and consistently followed in other cases. Furthermore, the Court of Appeals clearly distinguished from the earlier case of *Tompkins v. International, 183 Fed. 773,* in the same court, in

which on appeal a decree sustaining demurrer to the bill because the patent was about to expire, was reversed, and again *Clark v. Wooster* is cited as authority. *Tompkins v. St. Regis, 236 Fed. 221,* cited by petitioner, is clearly distinguishable inasmuch as the bill was filed four years after the patent expired.

2. From the foregoing decisions, it follows that the trial Court may in its discretion retain equity jurisdiction where a bill is filed shortly before expiration of the patent, the only necessary conditions precedent being the existence of time within which to present a motion for preliminary injunction. In the controlling case of *Clark v. Wooster, supra,* there was a period of fourteen days, and the opinion does not indicate whether or not application for an injunction was made, but the Court ruled that this was immaterial inasmuch as application could have been made in the comparatively short space of time. As above stated, in the present case there was a period of forty-two days within which time not only was application made, but papers in opposition were filed, the hearing was had, and an opinion rendered denying the injunction, all before the patent expiration date.

3. Again, as definitely announced in *Clark v. Wooster, supra,* the question of retaining equity jurisdiction resides solely within the discretion of the trial Court, and the exercise of that discretion will not be disturbed unless it is in a manner clearly illegal. Manifestly, there was nothing illegal in the trial Court's exercise of its discretion in this matter. The Court of Appeals has passed upon this discretionary matter at least twice, and it becomes apparent that the present petition is an attempt to secure a review by this Court upon a point of

law in the application of which this Court has stated the trial Judge is to be guided by his discretion.

4. The question of privity between the present petitioner and defendant in the Illinois suit was stressed in the present case, both in the trial Court and in the Court of Appeals. It appears that the trial Court was not convinced that the present petitioner had the right of appeal in the Illinois suit, although the other elements establishing privity were present. This conclusion by the trial Court was reached largely upon the testimony of a Mr. Herriott, local counsel for defendant in the Illinois suit, but it was strenuously contended that, even accepting this testimony, the present petitioner as defendant in this suit was estopped to deny that it had control of the appeal because of representations made in a letter from petitioner's counsel to Mr. Herriott (R. 538), a copy of which was forwarded to counsel for respondent herein, and representations made in a letter from counsel for petitioner to counsel for respondent (R. 541), in which letters respondent's counsel used the threat of taking an appeal in an attempt to procure a satisfactory settlement. Although in the instant suit the trial Court decided in respondent's favor on the validity and infringement questions, respondent was reluctant to forego the existence of privity between the parties, and the point was again urged in the Court of Appeals. Therefore, it is submitted that under the authority of *Murdock v. City of Memphis, 87 U. S. 590,* there is a strong probability that the Court of Appeals' affirmance was based upon the existence of a relationship of privity between petitioner and the defendant in the Illinois suit, in which case the present petition is without foundation.

SUMMARY

It is respectfully submitted:

1. An analysis of the decisions relied upon by petitioner shows a lack of conflict in decisions between different Courts of Appeals.

2. Controlling decisions of this Court announce that where the rules permit time within which to apply for an injunction after filing of the bill, equitable jurisdiction may be assumed and retained.

3. The retention of equity jurisdiction or dismissal of the bill is a discretionary matter on the part of the trial Court, and will not be disturbed unless clearly illegal.

4. The affirmance of the trial Court's decree in the instant case may have been upon the ground of *res adjudicata,* in which case the present petition is without basis inasmuch as the grounds advanced for invoking this Court's review were entirely lacking in the former suit.

Wherefore, respondent respectfully represents that the petition for certiorari should be denied.

Respectfully submitted,

JOSHUA R. H. POTTS,
Counsel for Respondent.

EUGENE VINCENT CLARKE,
HOWARD S. LAUGHLIN,
Of Counsel.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 155

RICE & ADAMS CORPORATION, PETITIONER,

vs.

HARRY D. LATHROP

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 24, 1928

CERTIORARI GRANTED OCTOBER 8, 1928

(33,464)

(33,464)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 155

RICE & ADAMS CORPORATION, PETITIONER,

vs.

HARRY D. LATHROP

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP, Plaintiff, vs. RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D*

Bill of Complaint

To the Honorable Judges of the District Court of the United States for the Western District of New York:

Harry D. Lathrop, a resident of the City of Chicago, County of Cook and State of Illinois, in the Eastern Division of the Northern District of Illinois, and a citizen of the State of Illinois brings this bill of complaint against Rice and Adams Corporation, a corporation duly organized and existing under the laws of the State of New York, having its principal place of business at Buffalo, New York, and a citizen of the State of New York, thereupon complains and says:—

First. This is a suit in equity, arising under the patent laws of the United States, being brought for infringement of United States Letters Patent to James R. Blair for can washing machines, granted March 3, 1908, No. 880,713.

Second. The plaintiff is informed and believes, and therefore avers, that on or prior to the 21st day of December, 1906, James R. Blair, then residing at Boston in the County of Suffolk and State of Massachusetts, was the original, first and sole inventor of certain new and useful improvements in can washing machines, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application for Letters Patent of the United States next hereinafter mentioned, and not in public use or on sale in this country for more than two years before his said application and not abandoned by him prior to said application, and not patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his application in this country, and that being such an original, first and sole inventor, the said James R. Blair, on said 21st day of December, 1906, made application, in due form of law, to the Commissioner of Patents of the United States for Letters Patent for his said invention and duly swore to the specification thereof; whereupon such proceedings were had, that on March 3, 1908, Letters Patent of the United States, No. 880,713, were duly issued for said invention and on said application to said James R. Blair, in conformity with the requirements of the statute in such cases made

and provided, and that said Letters Patent are good and valid in law and in equity and enforcible as such, and the plaintiff herein brings into court a duly authenticated copy of said Letters Patent and prays that the same may be taken as part of this bill. 7

Third. The said patent, above identified, has been assigned by mesne assignments or instruments in writing duly and properly recorded in the United States Patent Office, within three months from the date thereof to plaintiff herein who now owns said patent and all rights under it, including the right to recover for past infringements. 8

Fourth. The plaintiff is informed and believes, and therefore avers, that the defendant herein, has been, after the issuance of said Letters Patent, and before the commencement of this suit and both before and after the acquisition by plaintiff of said patent and all rights under it, and still is, within said western district of New York and more particularly in the City of Buffalo, County of Erie, and elsewhere in the United States, without license or permission of the plaintiff, and in infringement of said Letters Patent, making, using and selling can washing machines embodying the invention claimed in said Letters Patent, and more particularly in claims 2, 3, 4, 9, 10, 11, 12 and 13 thereof, all to the great and irreparable damage of the plaintiff. 9

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Fifth. The defendant has been duly notified of said Letters Patent and its infringement thereof in violation of the plaintiff's rights thereunder.

Sixth. The plaintiff is informed and believes, and therefore avers, that said defendant is prepared and ready to continue said infringement, and unless it is restrained from so doing, plaintiff will suffer great and irreparable damage from said unlawful acts of said defendant, and said defen-
11 dant has derived and received, and is still deriving and receiving from said infringing acts, great gains and profits.

Seventh. Plaintiff further avers that a certain suit in equity was instituted and prosecuted by him in the Northern District of Illinois Eastern Division, said suit being entitled "Harry D. Lathrop vs. Bowman Dairy Company, in equity No. 2239," and being based upon a bill of complaint, alleging infringement of the said Blair patent No.
12 880,713; that said suit was duly prosecuted by plaintiff to a final decree in said court and was bitterly contested on behalf of the said Bowman Dairy Company, defendant therein, and after due proceedings had, extensive testimony in the form of depositions being taken by both parties in various parts of the United States and introduced in evidence therein, and both parties being represented by counsel and the court having heard extensive arguments and considered said evidence and extensive briefs filed by both parties, did on the 21st day of January, 1924, enter an interlocu-

tory decree, a true and correct certified copy of said decree being hereunto attached, made a part hereof and marked Exhibit A; that later and on the 13th day of May, 1924, said court, entered a final decree and judgment in said case, a true and correct certified copy of said final decree and judgment being hereunto attached, made a part hereof and marked Exhibit B; that the defendant herein, the said Rice and Adams Corporation, openly and with the knowledge of plaintiff, conducted the defense of the said Bowman Dairy Company in said prior suit and paid all the expenses of such defense; that the said Rice and Adams Corporation, defendant herein, openly and with the knowledge of plaintiff, paid the judgment of $736.82 rendered in said final decree; that the said final decree entered by the District Court of the United States for the Northern District of Illinois, Eastern Division, in said suit, in equity No. 2239, thus became *res adjudicata* as against the defendant herein, the said Rice & Adams Corporation; that the can washing machines so held to infringe claims 2, 3, 4, 9, 10, 11, 12 and 13 of the said Blair patent, were manufactured and sold to the said Bowman Dairy Company by the said Rice & Adams Corporation, defendant herein; that the said Rice & Adams Corporation, defendant herein, is continuing to manufacture and sell machines in all respects substantially identical with the said machines so held to infringe the said Blair patent, and is also manufacturing and selling certain other and slightly different machines but involving

16 the same feature of construction, namely the drip saver, which was held in said prior suit to be the feature of construction which infringed the said Blair patent and that said defendant has manufactured and sold and is now manufacturing and selling large quantities of both types of said infringing machines, to the great and irreparable injury of the plaintiff.

Wherefor the plaintiff prays:—

17

1. That an account be taken of the profits received by defendant, and the damages of plaintiff in the premises, caused by said defendant.

2. That the defendant, its clerks, officers, attorneys, agents, servants and workmen may be enjoined and restrained, both provisionally and perpetually, by the decree and injunction of this court from directly or indirectly infringing upon said patent.

18 3. That the defendant may be decreed to pay the cost of this suit, and may be also restrained as aforesaid during the pendency of this suit.

4. That the plaintiff may have such other and further relief as the nature of the case may require.

5. The plaintiff further prays that this honorable court issue its writ of subpoena, in due form of law, according to the law and practice of the courts, directed to the said Rice & Adams Corporation, defendant aforesaid, commanding it, at a

certain day and under a certain penalty to be therein specified, to appear before this honorable court to answer all and singular the matters and things hereinbefore set forth and complained of, but not under oath, the answer under oath being hereby expressly waived, and to stand by and perform all the orders and decrees of the court herein.

HARRY D. LATHROP.

JOSHUA R. H. POTTS,
BRAYTON G. RICHARDS,
Solicitors for Plaintiff. 20

STATE OF ILLINOIS }
COUNTY OF COOK, } ss.:

On this 14th day of January, 1925, personally appeared before me, Harry D. Lathrop, the plaintiff in the above entitled case, and made oath that he had read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. 21

FREDA C. APPLETON,
Notary Public.

22 Decree

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Monday, January 21, A. D. 1924

Present: *Honorable George A. Carpenter, District Judge.*

23 HARRY D. LATHROP,
Plaintiff,
vs.
BOWMAN DAIRY COMPANY,
a Corporation,
Defendant.
In Equity No. 2239

Decree

This cause having come on to be heard, upon the
24 pleadings, proceedings and proofs herein, submitted on behalf of both parties, and after hearing counsel for plaintiff and defendant, and after due proceedings had, it is, upon consideration, ordered, adjudged, and decreed as follows:

First: That the Letters Patent of the United States issued to James R. Blair on March 3, 1908 for improvements in CAN WASHING MACHINES, No. 880,713, are good and valid in law, particularly as to Claims 2, 3, 4, 9, 10, 11, 12 and 13.

Second: That the plaintiff, Harry D. Lathrop, is the lawful owner of said Letters Patent.

Third: That the defendant, the Bowman Dairy Company, a corporation, has infringed upon the said Letters Patent, and particularly upon the said Claims 2, 3, 4, 9, 10, 11, 12 and 13, and upon the exclusive rights of the plaintiff under the same.

Fourth: That the plaintiff recover of the defendant the profits, gains and advantages which the said defendant has derived, received or made, by reason of its said infringement of said claims of said patent, and that the plaintiff do recover of the defendant any and all damages which the plaintiff has sustained, or shall sustain, by reason of said infringement by the said defendant.

Fifth: It is hereby referred to Charles B. Morrison, as a Master of this Court, who is hereby appointed, pro hac vice, to check and state the amount of said gains, profits and advantages and to assess such damages and to report thereon with all convenient speed; and the defendant, its directors, officers, attorneys, servants and workmen, are hereby directed and required to attend before said Master from time to time as required, and to produce before him such books, papers, vouchers and documents, and to submit such oral examination as the Master may require.

Sixth: That a perpetual injunction issue out of and under the seal of this Court, directed to the

said defendant, the said Bowman Dairy Company, its associates, directors, attorneys, clerks, agents, servants and workmen, enjoining and restraining them, and each of them, from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any articles, devices, apparatus, or Can Washing Machines, containing, embodying, or employing the said inventions or improvements granted by the said Letters Patents, and particularly claimed in the said Claims 2, 3, 4, 9, 10, 11, 12 and 13, or any part or parts of Can Washing Machines capable of being combined or adapted to be used in infringement of said claims, or from infringing upon or violating the said Letters Patent in any way whatsoever, said injunction not to apply however to the machines which the Bowman Dairy Company now have in actual use until after final decree.

Seventh: That plaintiff do recover of the defendant his costs and disbursements of this suit to be taxed, and that all further questions be reserved until the coming in of the Master's report.

Enter CARPENTER,
District Judge.

Entered, January 21st, 1924.
O. K. as to Form:

.....
Attorney for Plaintiff.

.....
Attorney for Defendant.

31

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

I, JOHN H. R. JAMAR, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of DECREE made and entered in said Court on the 21st day of January, A. D. 1924, as fully as the same appears of record in my office.

32

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 10th day of January, A. D. 1925.

JOHN H. R. JAMAR,
Clerk.

33

34 COPY

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARRY D. LATHROP,
Plaintiff,
vs.
BOWMAN DAIRY COMPANY,
35 a Corporation,
Defendant.

In Equity No. 2239.

Final Decree

This cause coming on to be heard and it appearing to the Court that an interlocutory decree was entered herein on January 21, 1924, holding the patent to James R. Blair for Can Washing Machines, No. 880,713, dated March 3, 1908, and
36 said James R. Blair to be the sole, original and true inventor of the subject matter thereof, good and valid in law and infringed by the defendant, the Bowman Dairy Company, as to Claims 2, 3, 4, 9, 10, 11, 12 and 13, by using the Can washing Machine manufactured by and purchased from Rice & Adams Corporation; it further appearing that the said defendant has used and is now using three such machines infringing upon said patent, and it further appearing to the Court that the parties hereto, in order to save the cost of an accounting, have agreed upon the sum of Seven Hundred

Thirty-Six Dollars and Eighty-two Cents as a total sum to be assessed against the said defendant in lieu of an accounting for damages, profits and costs, it is ordered, adjudged and decreed that said defendant pay to the said plaintiff the sum of Seven Hundred Thirty-Six Dollars and Eighty-two Cents, and that the plaintiff have execution therefor. 37

That the said plaintiff, Harry D. Lathrop is the lawful owner of said Letters Patent.

That a permanent and perpetual injunction issue out of and under the seal of this Court directed to the said defendant, the said Bowman Dairy Company, its associates, directors, attorneys, clerks, agents, servants and workmen, enjoining and restraining them, and each of them, from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any articles, devices, apparatus, or Can Washing Machines, containing, embodying, or employing the said inventions or improvements granted by said Letters Patent, and particularly claimed in the said Claims 2, 3, 4, 9, 10, 11, 12 and 13, or any part or parts of Can Wasning Machines capable of being combined or adapted to be used in infringement of said Claims, or from infringing upon or violating the said Letters Patent in any way whatsoever, except on the written license of the plaintiff or his assigns. 38 39

Enter CARPENTER,
District Judge.

40 Final Decree

Entered May 13, 1924.

OK as to Form.

(Signed)
JOSHUA R. H. POTTS,
Attorney for Plaintiff.

(Signed)
MONTGOMERY, HART & SMITH,
41 *Attorneys for Defendant.*

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

I, JOHN H. R. JAMAR, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the
42 above and foregoing to be a true and correct copy of FINAL DECREE made and entered in said Court on the 13th day of May, A. D. 1924, as fully as the same appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 10th day of January, A. D. 1925.

JOHN H. R. JAMAR,
Clerk.

Original Answer

43

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP, Plaintiff, *against* RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D.*

44

Answer of Rice & Adams Corporation

Now comes Rice & Adams Corporation, defendant herein, and in its own behalf makes answer to the bill of complaint, filed herein, as follows:

45 The defendant now and at all times hereafter saving and reserving unto itself all and all manner of benefit and advantage by exception, or otherwise, which can or may be had or taken to the manifold errors, insufficiencies, uncertainties and imperfections in said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

1. The defendant denies each and every alle-

46 Answer of Rice & Adams Corporation

gation in said bill of complaint except as hereinafter admitted or specifically answered and avoided and requires strict proof of each and every allegation.

2. The defendant is not advised, save by the bill of complaint, whether the plaintiff is a resident of the City of Chicago, County of Cook and State of Illinois, or a citizen of the State of Illinois, or elsewhere, and leaves the plaintiff to the
47 proof thereof.

3. The defendant admits that it is a corporation duly organized and existing under the laws of the State of New York and that it has a principal place of business in Buffalo, New York, and is a citizen of the State of New York.

4. The defendant denies that the facts alleged in the complaint herein constitute a sufficient cause of action in equity and alleges that plaintiff has
48 an adequate remedy at law and that this Court, as a Court of Equity, has no jurisdiction herein.

5. The defendant admits that Letters Patent of the United States, Number 880,713, were issued on the 3rd day of March, 1908, but denies that on or prior to the 21st day of December, 1906, James R. Blair, then residing at Boston, in the County of Suffolk and State of Massachusetts, was the original, first and sole inventor of certain or any new and useful improvements in can washing machines; and denies that said improvements were not

known or used by others in this country before the alleged invention thereof by said James R. Blair; and were not patented or described in any printed publication in this or any foreign country before his alleged invention thereof, or more than two years prior to his alleged application for Letters Patent of the United States, and were not in public use or on sale in this country for more than two years before his alleged application and were not abandoned by him prior to said application, and were not patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his alleged application in this country; and denies that said James R. Blair on the 21st day of December, 1906, or at any time made application in due form of law to the Commissioner of Patents of the United States for Letters Patent on his said alleged invention and duly swore to the specification thereof; and denies that said Blair fully or in any respect complied with the law in such cases made and provided as regards any application to the Commissioner of Patents of the United States for Letters Patent on his alleged invention, and denies that proper proceedings were had on his alleged application and that Letters Patent No. 880,713 were duly issued for said alleged invention in conformity with the law and Statutes made and provided in such cases; and denies that said Letters Patent are good and valid in law and in equity and enforceable as such.

52 Answer of Rice & Adams Corporation

6. The defendant is not advised, save by the bill of complaint, whether said alleged patent has been assigned by mesne assignments or instruments in writing or otherwise, to plaintiff herein or to any other person, or whether said alleged assignments were duly and properly recorded in the United States Patent Office within three months from the date thereof or at any time, or whether said plaintiff herein now owns said patent and all or any rights under it, including the right
53 to recover for past infringements, and therefore, denies the same and requires plaintiff to make strict proof thereof.

7. Defendant denies that it is now or has been at any time within the Western District of New York, and particularly in the City of Buffalo, or elsewhere, making, using or selling can washing machines embodying the alleged invention claimed in said Letters Patent, and more particularly in claims 2, 3, 4, 9, 10, 11, 12 and 13 thereof, and in
54 infringement of said Letters Patent, and denies that the plaintiff has suffered any damage from any acts of this defendant.

8. The defendant denies that it was duly notified of said Letters Patent and of its alleged infringement thereof prior to the filing of the bill.

9. The defendant denies that it is prepared and ready to continue the alleged or any infringement of said Letters Patent or do any illegal act and denies that plaintiff will suffer great and irreparable or any damage from any acts of this defend-

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ant, and denies that it has derived and received or is deriving and receiving great, or any gains and profits from any infringing acts against the plaintiff or any other party.

10. The defendant admits that a certain suit in Equity was instituted and prosecuted by plaintiff herein in the Northern District of Illinois, Eastern Division, said suit being entitled "Harry D. Lathrop vs. Bowman Dairy Company, in Equity 56
No. 2239" and being based upon a bill of complaint alleging infringement of the said Blair patent No. 880,713; that the Court did on the 21st day of January, 1924, enter an interlocutory decree in said suit in accordance with the copy of said decree attached to the bill of complaint marked "Exhibit A"; that on the 13th day of May, 1924, said court entered a final decree in said case in accordance with the copy of said decree attached to the bill of complaint herein and marked "Exhibit B"; that the defendant herein 57
conducted the defense of said Bowman Dairy Company in said prior suit and paid the expenses of such defense; that defendant herein paid the judgment of Seven hundred thirty-six and 82-100 ($736.82) Dollars rendered in said final decree, and that testimony in the form of depositions was taken by both parties and introduced in evidence in said suit; but defendant denies that said suit was, as alleged, duly prosecuted by plaintiff and was bitterly contested on behalf of said Bowman Dairy Company, defendant therein; and that due

proceedings were had, both parties being represented by counsel, and that the Court heard extensive arguments and considered said evidence and extensive briefs filed by both parties; and defendant denies that said final decree entered in said suit No. 2239 because *res adjudicata* as against the defendant herein; and denies that the can washing machines held in said suit to infringe claims 2, 3, 4, 9, 10, 11, 12 and 13 of said Blair
59 patent were manufactured and sold to said Bowman Dairy Company by defendant herein; and denies that defendant is continuing to manufacture and sell machines in all respects substantially identical with said machines so held in said suit No. 2239 to infringe the said Blair patent; and denies that defendant is also manufacturing and selling certain other and slightly different machines but involving the feature of construction, namely the drip saver, alleged to have been held in said prior suit to be the feature of construction
60 which infringed said Blair patent; and denies that defendant has manufactured and sold and is now manufacturing and selling large quantities of both types of said alleged infringing machines to the great and irreparable, or any injury of the plaintiff; and defendant further denies that the interlocutory and final decrees in said prior suit No. 2239 held that "the drip saver" or any particular feature or features of construction of the alleged infringing machine infringed the said Blair patent, but on the contrary defendant asserts that the decrees in said prior suit held that claims 2, 3, 4,

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9, 10, 11, 12 and 13 of said Blair patent, each of which claims is for a particular combination of elements set forth in the claim, was infringed; and defendant further denies that it has manufactured and sold or is now manufacturing and selling any machines in infringement of said Blair patent; and denies that it has done or is doing any act to the injury of the plaintiff or in infringement of any rights of the plaintiff.

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11. Further answering, defendant avers that said letters Patent No. 880,713, were granted March 3, 1908, to said James R. Blair, his heirs and assigns for the term of seventeen years from the third day of March, 1908, and have expired by operation of law and are now without force or effect; that plaintiff herein moved for a preliminary injunction restraining defendant from the alleged infringement of said patent pending the final determination of this suit and that affidavits in support of and opposing said motion were filed and the motion was set for hearing; that on January 31, 1925, his Honor, Judge Hazel, heard arguments of counsel for plaintiff and defendant in support of and against said motion and on the 9th day of February, 1925, rendered a decision denying said motion for preliminary injunction and that an order denying said injunction was entered herein on the 3rd day of March, 1925; that plaintiff has not appealed from said order denying said preliminary injunction, and, the patent having expired as aforesaid, no injuction either

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prelimiary or permanent, can issue herein and plaintiff has no equitable cause of action but has an adequate remedy at law and this Court of Equity is without jurisdiction.

12. Further answering, defendant avers upon information and belief that the alleged invention or improvement described and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof was shown, patented and
65 described prior to the alleged invention or discovery thereof by said James R. Blair, or more than two years prior to his application for patent therefor, in the following specified Letters Patent and in the following specified publications, to-wit:—

U. S. LETTERS PATENT

70,973	Davison	Nov. 19, 1867
193,222	Buell	July 17, 1877
291,117	Wicks	Jan. 1, 1884
66 299,185	Von Schade	May 27, 1884
338,096	Merkle	1886
345,703	Lafferty	1886
369,424	Baker	Sept. 6. 1887
376,546	Pond	1888
393,769	Lorimer	1888
459,337	Strong et al	1891
490,100	Burt	Jan. 17, 1893
498,549	Hodgdon	May 30, 1893
508,740	Neely	Nov. 14, 1893
515,283	Bucklin	Feb. 20, 1894
536,785	Griesser	1895

544,880	Bonk et al	1895
546,205	Van Gilder	Sept. 10, 1895
547,307	Vollkommer	Oct. 1, 1895
549,097	Baker	1895
555,598	Donally	Mar. 3, 1896
578,807	Barr et al	1897
582,012	Donally	May 4, 1897
618,795	Kellington	1899
613,382	Meinahauser	1898
616,284	Baker et al	1898
616,737	Schuster	1898
616,831	Elliot	1898
625,762	Hayes	1899
641,248	Ten Winkel	1900
643,479	Res Brisal	Feb. 13, 1900
648,138	Adams et al	Apr. 24, 1900
660,314	Rosedale	Oct. 23, 1900
663,142	Waring	Dec. 4, 1900
676,920	Schreiber	June 25, 1901
682,749	Roberts	1901
688,152	Atwood	1901
483,757	Allgood	Oct. 4, 1892
505,208	Wayandt	Sept. 19, 1893
639,378	Groterjan	Dec. 19, 1899
688,740	Kissel et al	Dec. 10, 1901
690,563	Cobb	Jan. 7, 1902
694,416	Phelan	Mar. 4, 1902
700,925	Heurteuax	May, 27, 1902
708,738	Schirmer	Sept. 9, 1902
721,824	Norkewitz	Mar. 3, 1903
724,734	Pindstofte	Apr. 7, 1903
736,762	Mitchell	Aug. 18, 1903

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745,752	Adams et al	Dec. 1, 1903
748,585	Clifford	Jan. 5, 1904
755,018	Laible	Mar. 22, 1904
762,522	Gillessen	June 14, 1904
764,222	Adams et al	July 5, 1904
781,692	Stubbs	Feb. 7, 1905
784,504	Rubin	Mar. 7, 1905
850,199	Wright et al	Apr. 16, 1907
821,812	Mather et al	1906
864,131	Hood	Aug. 20, 1907
864,132	Hood	Aug. 20, 1907
864,133	Hood	Aug. 20, 1907
934,404	Hood	Sept. 14, 1909
1,110,615	Hick	Sept. 15, 1914

and letters patent of the Kingdom of Great Britain as follows:—

No. 1,738 of 1900 to Gillies
No. 4,993 of 1902 to Cowey

Catalogue 1905 of Dairy Machinery & Construction Co., Derby, Conn.,

and also by other Letters Patent and publications at present unknown to this defendant, and which when known, defendant prays leave to insert herein by proper amendment.

13. Further answering, the defendant avers upon information and belief that the alleged invention described and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof, was in public use or on sale in this country for more than two years prior to

the application for said Letters Patent, and has been abandoned. 73

14. Further answering, the defendant avers upon informatiion and belief that the alleged invention described and claimed as new by said Letters Patent and attempted to be patented thereby, and every material and substantial part thereof, did not exhibit any material or substantial variation or change from the devices known in the art as it existed at the date of the alleged invention or discovery thereof by said James R. Blair, and did not at such date involve any exercise of inventive faculty and did not constitute subject-matter of invention proper to be secured by the grant of Letters Patent within the meaning and intent of the Statutes of the United States relating to patents for inventions, but was an unpatentable aggregation. 74

15 And further answering, the defendant avers upon information and belief that said Letters Patent are invalid, void and of no effect in law for the following reasons: 75

(a) Because the alleged invention described and claimed in said Letters Patent and every material and substantial part thereof had been invented, produced and used and was known prior to the alleged invention thereof by said James R. Blair, to the following named persons, firms and corporations in and at the following named places, to-wit:

76 Charles S. Adams, Albert J. Rice and O. Adams, of Buffalo, N. Y., at said Buffalo, and elsewhere.

R. G. and K. K. Wright of Buffalo, N. Y., at said Buffalo and elsewhere.

C. H. Hood and H F. Hood & Sons of Charlestown, Mass., at said Charlestown, and elsewhere.

Thomas Sharlow and C. H. Tillson of
77 New York, N Y., at said New York and elsewhere.

and by other persons, firms and corporations at the present time unknown to this defendant, but which when known, defendant prays leave to insert herein by proper amendment.

(b) Because said alleged invention described and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof was known to and in public use or on sale in this country for more than two years prior to the application of said James R. Blair for said patent, by the following persons, firms and corporations at the following named places, to-wit:

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C. S. Adams, A. J. Rice and Rice & Adams of Buffalo, N. Y., at said Buffalo and elsewhere.

Thomas Sharlow and C. H. Tilson of New York, N. Y., at said New York and elsewhere.

and by other persons, firms and corporations and

at other places at this time unknown to the defendant, but which when known, defendant prays leave to insert herein by proper amendment.

(c) Because said James R. Blair surreptitiously or unjustly obtained the patent for that which was in fact the invention of another, who was using reasonable diligence in adapting and perfecting the same.

16. Further answering, defendant is informed and believes and therefore avers that said patent No. 880,713 was and is without value and merit commercially. 80

17. Further answering, defendant is informed and believes, and therefore avers that no proper notice of the plaintiff's alleged rights herein has been given to defendant or to the public as required by Section 4900 R.S., by marking machines or apparatus embodying the alleged invention of said Letters Patent with the words "Patented" and the date of the patent. 81

WHEREFORE, the defendant prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

MITCHELL & STAPLES
Attorneys for Defendant.

CHARLES W. PARKER
Of Counsel.

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Supplemental Answer

IN THE DISTRICT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF
NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
83 RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity, No. 793-D.

Supplemental Answer of Rice & Adams Corporation

Now comes Rice & Adams Corporation, defendant herein, and in its own behalf makes supplemental answer to the bill of complaint, filed here-
84 in, as follows:—

The defendant now and at all times hereafter saving and reserving unto itself all and all manner of benefit and advantage by exception, or otherwise, which can or may be had or taken to the manifold errors, insufficiencies, uncertainties and imperfections in said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

Supplemental Answer of Rice & Adams Corporation 85

1. The defendant denies each and every allegation in said bill of complaint except as hereinafter admitted or specifically answered and avoided and requires strict proof of each and every allegation.

2. The defendant is not advised, save by the bill of complaint, whether the plaintiff is a resident of the City of Chicago, County of Cook and State of Illinois, or a citizen of the State of Illinois, or elsewhere, and leaves the plaintiff to the proof thereof. 86

3. The defendant admits that it is a corporation duly organized and existing under the laws of the State of New York and that it has a principal place of business in Buffalo, New York, and is a citizen of the State of New York.

4. The defendant denies that the facts alleged in the complaint herein constitute a sufficient cause of action in equity and alleges that plaintiff has an adequate remedy at law and that this 87 Court, as a Court of Equity, has no jurisdiction herein.

5. The defendant admits that Letters Patent of the United States, Number 880,713, were issued on the 3rd day of March, 1908, but denies that on or prior to the 21st day of December, 1906, James R. Blair, then residing at Boston, in the County of Suffolk and State of Massachusetts, was the original first and sole inventor of certain or any new and useful improvements in can washing mach-

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ines; and denies that said improvements were not known or used by others in this country before the alleged invention thereof by said James R. Blair, and were not patented or described in any printed publication in this or any foreign country before his alleged invention thereof, or more than two years prior to his alleged application for Letters Patent of the United States, and were not in public use or on sale in this country for more than
89 two years before his alleged application and were not abandoned by him prior to said application, and were not patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his alleged application in this country; and denies that said James R. Blair on the 21st day of December, 1906, or at any time made application in due form of law to the Commissioner of Patents of the United States for Letters Patent on his said alleged in-
90 vention and duly swore to the specification thereof; and denies that said Blair fully or in any respect complied with the law in such cases made and provided as regards any application to the Commissioner of Patents of the United States for Letters Patent on his alleged invention, and denies that proper proceedings were had on his alleged application and that Letters Patent No. 880,713 were duly issued for said alleged invention in conformity with the law and statutes made and provided in such cases; and denies that said Letters

Patent are good and valid in law and in equity and enforceable as such.

6. The defendant is not advised, save by the bill of complaint, whether said alleged patent has been assigned by mesne assignments or instruments in writing or otherwise, to plaintiff herein or to any other person, or whether said alleged assignments were duly and properly recorded in the United States Patent Office within three months from the date thereof or at any time, or 92 whether said plaintiff herein now owns said patent and all or any rights under it, including the right to recover for past infringements, and therefore, denies the same and requires plaintiff to make strict proof thereof.

7. Defendant denies that it is now or has been at any time within the Western District of New York, and particularly in the City of Buffalo, or elsewhere, making, using or selling can washing machines embodying the alleged invention claimed 93 in said Letters Patent, and more particularly in claims 2, 3, 4, 9, 10, 11, 12 and 13 thereof, and in infringement of said Letters Patent, and denies that the plaintiff has suffered any damage from any acts of this defendant.

8. The defendant denies that it was duly notified of said Letters Patent and of its alleged infringement thereof prior to the filing of the bill.

9. The defendant denies that it is prepared and

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ready to contiue the alleged or any infringement of said Letters Patent or do any illegal act and denies that plaintiff will suffer great and irreparable or any damage from any acts of this defendant, and denies that it has derived and received or is deriving and receiving great, or any gains and profits from any infringing acts against the plaintiff or any other party.

95 10. The defendant admits that a certain suit in equity was instituted and prosecuted by plaintiff herein in the Northern District of Illinois, Eastern Division, said suit being entitled "Harry D. Lathrop vs. Bowman Dairy Company, in Equity No. 2239" and being based upon a bill of complaint alleging infringment of the said Blair patent No. 880,713; that on the 21st day of January, 1924, an interlocutory decree in said suit was entered, a copy of which said decree is attached to the bill of complaint herein and marked "Exhibit
96 A"; that on the 13th day of May, 1924, a final decree was entered in said case, a copy of which said decree is attached to the bill of complaint herein and marked "Exhibit B"; but the defendant denies that the defendant herein conducted the defense of said Bowman Dairy Company in said prior suit; and denies that defendant herein paid the judgment of Seven hundred thirty-six and 82-100 ($736.82) Dollars rendered in said final decree, and denies that said suit was, as alleged, duly prosecuted by plaintiff to a final decree; and defendant denies that said final decree entered in

said suit No. 2239 became *res adjudicata* as against the defendant herein and denies that the can washing machines held in said suit to infringe claims 2, 3, 4, 9, 10, 11, 12 and 13 of said Blair patent were manufactured and sold to said Bowman Dairy Company by defendant herein; and denies that defendant is continuing to manufacture and sell machines in all respects substantially identical with said machines so held in said suit No. 2239 to infringe the said Blair patent; and 98
denies that defendant is also manufacturing and selling certain other and slightly different machines but involving the feature of construction, namely the drip saver, alleged to have been held in said prior suit to be the feature of construction which infringed said Blair patent; and denies that defendant has manufactured and sold and is now manufacturing and selling large quantities of both types of said alleged infringing machines to the great and irreparable, or any injury of the plaintiff; and defendant further denies that it has man- 99
ufactured and sold or is now manufacturing and selling any machines in infringement of said Blair patent; and denies that it has done or is doing any act to the injury of the plaintiff or in infringement of any rights of the plaintiff.

11. Further answering, defendant avers that said Letters Patent No. 880,713, were granted March 3, 1908, to said James R. Blair, his heirs and assigns for the term of seventeen years from the third day of March, 1908, and have expired by

operation of law and are now without force or effect; that plaintiff herein moved for a preliminary injunction restraining defendant from the alleged infringement of said patent pending the final determination of this suit and that the affidavits in support of and opposing said motion were filed and the motion was set for hearing; that on January 31, 1925, his Honor, Judge Hazel, heard arguments of counsel for plaintiff and defendant in support of and against said motion and on the
101 9th day of February, 1925, rendered a decision denying said motion for preliminary injunction and that an order denying said injunction was entered herein on the 3rd day of March, 1925; that plaintiff has not appealed from said order denying said preliminary injunction, and, the patent having expired as aforesaid, no injunction either preliminary or permanent, can issue herein and plaintiff has no equitable cause of action but has an adequate remedy at law and this Court of
102 Equity is without jurisdiction.

12. Further answering, defendant avers upon information and belief that the alleged invention or improvement described and claimed in said Letters Patent No. 880,713 and every material and substantial part therof was shown, patented and described prior to the alleged invention or discovery thereof by said James R. Blair, or more than two years prior to his application for patent therefor, in the following specified Letters Patent and in the following specified publications, to-wit:

U. S. Letters Patent.

70,973	Davison	Nov. 19, 1867	
193,222	Buell	July 17, 1877	
291,117	Wicks	Jan. 1, 1884	
299,195	Von Schade	May 27, 1884	
338,096	Merkle	1886	
345,703	Lafferty	1886	
369,424	Baker	Sept. 6, 1887	
376,546	Pond	1888	
393,769	Lorimer	1888	
459,337	Strong et al	1891	
490,100	Burt	Jan. 17, 1893	104
496,549	Hodgdon	May 30, 1893	
508,740	Neely	Nov. 14, 1893	
515,283	Bucklin	Feb. 20, 1894	
536,785	Greisser	1895	
544,880	Bonk et al	1895	
546,205	Van Gilder	Sept. 10, 1895	
547,307	Vollkommer	Oct. 1, 1895	
549,097	Baker	1895	
555,598	Donally	Mar. 3, 1896	
578,807	Barr et al	1897	
582,012	Donally	May 4, 1897	105
618,795	Kellington	1899	
613,382	Meinshauser	1898	
616,284	Baker et al	1898	
616,737	Schuster	1898	
616,831	Elliott	1898	
625,762	Hayes	1899	
641,248	Ten Winkel	1900	
643,479	Des Brisay	Feb. 13 1900	
646,138	Adams et al	Apr. 24, 1900	
660,314	Rosedale	Oct. 23, 1900	
663,142	Waring	Dec. 4, 1900	

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	676,920	Schreiber	June 25, 1901
	682,749	Roberts	1901
	688,152	Atwood	1901
	483,757	Allgood	Oct. 4, 1892
	505,208	Wayandt	Sept. 19, 1893
	639,378	Groterjan	Dec. 19, 1899
	688,740	Kissell et al	Dec. 10, 1901
	690,563	Cobb	Jan. 7, 1902
	694,416	Phelan	Mar. 4, 1902
107	700,925	Heurteuax	May 27, 1902
	708,738	Schirmer	Sept. 9, 1902
	721,824	Norkewitz	Mar. 3, 1903
	724,734	Pindstofte	Apr. 7, 1903
	736,762	Mitchell	Aug. 18, 1903
	745,752	Adams et al	Dec. 1, 1903
	748,585	Clifford	Jan. 5, 1904
	755,018	Laible	Mar. 22, 1904
	762,522	Gillessen	June 14, 1904
	764,222	Adams et al	July 5, 1904
	781,692	Stubbs	Feb. 7, 1905
108	784,504	Rubin	Mar. 7, 1905
	850,199	Wright et al	Apr. 16, 1907
	821,812	Mather et al	1906
	864,131	Hood	Aug. 20, 1907
	864,132	Hood	Aug. 20, 1907
	864,133	Hood	Aug. 20, 1907
	934,404	Hood	Sept. 14, 1909
	1,110,615	Hick	Sept. 15, 1914
	240,404	Gibbs	Apr. 19, 1881
	639,378	Groterjan	Dec. 19, 1899
	483,757	Allgood	Oct. 4, 1892
	505,208	Wagandt	Sept. 19, 1893

and Letters Patent of the Kingdom of Great Britain as follows:

No 1,738 of 1900 to Gillies

No. 4,993 of 1902 to Cowey

Catalogue 1905 of Dairy Machinery & Construction Co., Derby, Conn.,

and also by other Letters Patent and publications at present unknown to this defendant, and which when known, defendant prays leave to insert herein by proper amendment.

13. Further answering, the defendant avers upon informatioin and belief that the alleged invention described and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof, was in public use or on sale in this country for more than two years prior to the application for said Letters Patent, and has been abandoned.

14. Further answering, the defendant avers upon information and belief that the alleged invention described and claimed as new by said Letters Patent and attempted to be patented thereby and every material and substantial part thereof, did not exhibit any material or substantial variation or change from the devices known in the art as it existed at the date of the alleged invention or discovery thereof by said James R. Blair, and did not at such date involve any exercise of inventive faculty and did not constitute subject-matter of invention proper to be secured by the grant of Letters Patent within the meaning and intent of the Statutes of the United States relat-

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ing to patents for inventions but was an unpatentable aggregation.

15. And further answering, the defendant avers upon information and belief that said Letters Patent are invalid, void and of no effect in law for the following reasons:

(a) Because the alleged invention described and claimed in said Letters Patent and every material and substantial part thereof had been in-
113 vented, produced and used and was known prior to the alleged invention thereof by said James R. Blair, to the following named persons, firms and corporations in and at the following named places, to-wit:

Charles S. Adams, Albert J. Rice and O. Adams, of Buffalo, N. Y., at said Buffalo, and elsewhere.

R. G. and K. K. Wright of Buffalo, N. Y., at said Buffalo and elsewhere.

114 C. H. Hood and H. P. Hood & Sons of Charlestown, Mass., at said Charlestown and elsewhere.

Thomas Sharlow and C. H. Tillson of New York, N. Y., at said New York and elsewhere.

and by other persons, firms and corporations at the present time unknown to this defendant, but which when known, defendant prays leave to insert herein by proper amendment.

(b) Because said alleged invention described

and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof was known to and in public use or on sale in this country for more than two years prior to the application of said James R. Blair for said patent, by the following persons, firms and corporations at the following named places, to-wit:—

C. S. Adams, A. J. Rice and Rice & Adams of Buffalo, N. Y., at said Buffalo and elsewhere.

Thomas Sharlow and C. H. Tillson of New York, N. Y., at said New York and elsewhere.

George Sable, Ulrich Gressle, Daniel McNamee, R. W. Jones, Samuel H. Tillman, Frank Vine, J. W. Dodds and Philip Smith, all of the City of Buffalo, N. Y., at said City of Buffalo, and elsewhere.

Fred W. Husted, of East Aurora, N. Y., at said City of Buffalo, and elsewhere.

and by other persons, firms and corporations and at other places at this time unknown to the defendant, but which when known, defendant prays leave to insert herein by proper amendment.

(c) Because said James R. Blair surreptitiously or unjustly obtained the patent for that which was in fact the invention of another, who was using reasonable diligence in adapting and perfecting the same.

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16. Further answering, defendant is informed and believes and therefore avers that said patent No. 880,713 was and is without value and merit commercially.

17. Further answering, defendant is informed and believes, and therefore avers that no proper notice of the plaintiff's alleged rights herein has been given to defendant or to the public as required by Section 4900 R.S., by marking machines
119 or apparatus embodying the alleged invention of said Letters Patent with the words "Patented" and the date of the patent.

WHEREFORE, the defendant prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

Dated, Buffalo, N. Y., May 1st, 1926.

MITCHELL & STAPLES
Attorneys for Defendant.

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CHARLES W. PARKER
Of Counsel.

Interrogatories

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,

against

RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No.

12[illegible]

Interrogatories directed to the defendant to be answered in conformity with the provisions of rule 58 of the rules of practice for Courts of Equity of the United States:—

1. State whether or not you, openly and with the knowledge of plaintiff, conducted and paid for the defense of the Bowman Dairy Company in the suit in the Northern District of Illinois, Eastern Division, entitled Lathrop vs Bowman Dairy Company, in equity No. 2239. 12[illegible]

2. State whether or not you conducted and paid for the defense of the Bowman Dairy Company in the suit in the Northern District of Illinois, Eastern Division, entitled Lathrop vs. Bowman Dairy Company, in equity No. 2239.

3. State whether or not you, openly and with the knowledge of plaintiff, paid the judgment of $736,82, rendered by the court against the Bow-

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man Dairy Company, in the suit in the Northern District of Illinois, Eastern Division, entitled Lathrop vs Bowman Dairy Company, in equity No. 2239.

4. State whether or not you paid the judgment of $736.82, rendered by the court against the Bowman Dairy Company, in the suit in the Northern District of Illinois, Eastern Division, entitled Lathrop vs Bowman Dairy Company, in equity
125 No. 2239.

5. State whether or not you made and sold to the Bowman Dairy Company, the three machines which were held in said suit to infringe the Blair patent No. 880,713.

6. State whether or not you have been making and selling other machines like the said three machines sold by you to the said Bowman Dairy Company, in the Western District of New York, and elsewhere in the United States, in the last six
126 years, and prior to the commencement of this suit.

7. State whether or not you have been making and selling still other machines, employing a device or arrangement for saving or preserving milk or cream, dripping from the cans or other receptacles, preparatory to the washing thereof, in the Western District of New York, during the past six years, and prior to the commencement of this suit.

HARRY D. LATHROP.
By Joshua R. H. Potts
His Attorney.

Answer to Plaintiff's Interrogatories 127

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff.
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No. 793-D

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Now comes Orlando Adams, the Treasurer of the defendant in the above entitled action and makes answer to plaintiff's interrogatories as follows:—

In answer to the said plaintiff's interrogatory numbered 1, defendant states that through its attorneys it assisted in the conduct of the defense of the Bowman Dairy Company in the said suit in the Northern District of Illinois, Eastern Division, entitled Lathrop against Bowman Dairy Company, and that it paid its attorneys for the services performed in said suit. 129

In answer to plaintiff's interrogatory numbered 2, defendant states it has already answered this interrogatory in its statement in answer to plaintiff's interrogatory numbered 1.

In answer to plaintiff's interrogatory numbered 3, defendant states that it paid to the attorneys

130 for the Bowman Dairy Company, the judgment and costs rendered by the Court against the Bowman Dairy Company in the said suit of Lathrop against said Bowman Dairy Company.

In answer to plaintiff's interrogatory numbered 4, defendant states that it has already answered this interrogatory by its answer to interrogatory numbered 3.

131 In answer to plaintiff's interrogatory numbered 5, defendant objects to answering the same for the reason that no specific machines of which the defendant has any knowledge were held by the said Court to infringe the Blair patent No. 880,713, and that said defendant has sold many machines to the Bowman Dairy Company and cannot, therefore, answer said interrogatory.

In answer to plaintiff's interrogatory numbered 6, defendant objects to answering the said interrogatory for the reason set forth in its objection
132 to the answer to plaintiff's interrogatory numbered 5.

In answer to plaintiff's interrogatory numbered 7, defendant respectfully objects to answering the said question for the reason that the said interrogatory of the said plaintiff is incompetent, irrelevant and immaterial, and that it does not concern the plaintiff in the above entitled action whether or not the defendant is making and selling other machines than those which the plaintiff alleges infringes the said Blair patent No. 880,713.

RICE AND ADAMS CORPORATION,

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By Orlando Adams,
Treasurer.

MITCHELL & STAPLES,
Defendant's Attorneys,
1144 Prudential Bldg.,
Buffalo, N. Y.

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Defendants Affidavits on Motion for Preliminary Injunction

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

135

Harry D. Lathrop,
Plaintiff,

against

Rice & Adams Corporation,
a Corporation,
Defendant.

In Equity No. 793-D.

STATE OF NEW YORK,
COUNTY OF ERIE,
CITY OF BUFFALO. } ss.

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Frederick G. Mitchell, being duly sworn, deposes and says: that he is an attorney and counsellor at law admitted to practice in all of the Courts of the State of New York, and in the United States Courts including the Western District of New York, and is a member of the firm of Mitchell & Staples, which said firm is general counsel for the Rice and Adams Corporation, of Buffalo, N. Y.

137 That heretofore and sometime in the early part of the year 1921 an action was commenced by the above named plaintiff against the Bowman Dairy Company of Chicago and the Rice and Adams Corporation, alleging infringement of a patent known as the Blair patent alleged to be owned by the plaintiff, and that upon advice of deponent's firm a motion was made and granted by the District Court for the Northern District of Illinois, Eastern Division, setting aside the service of process above made upon the Rice and Adams Corporation; that the firm of Montgomery, Hart &
138 Smith, of Chicago, was attorneys for the Bowman Dairy Company, and for that reason the motion to set aside the service of said process was made by said firm, acting as local counsel for deponent's firm; that thereafter the firm of Montgomery, Hart & Smith appeared as attorneys of record for their client, the Bowman Dairy Company in said action and from time to time sought the assistance of deponent's firm and of their patent counsel in Buffalo, Parker & Prochnow.

Deponent further says that the Bowman Dairy

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Company was a customer of the Rice and Adams Corporation having dealt with them for many years and purchased many machines from said Corporation of various descriptions, and that when said action was commenced by the said Lathrop against the Bowman Dairy Company, it was deemed advisable and good business policy on the part of Rice and Adams Corporation, which was advised by deponent's firm, to lend every assistance and to give whatever could be given to assist in 140
defending the said suit.

Deponent further says that after the testimony in said Chicago case had been taken and the case was prepared for argument, Deponent's firm concluded and so advised the Rice and Adams Corporation that no showing had been made in the said Lathrop case in Chicago that any one of the machines sold by the Rice and Adams Corporation to the Bowman Dairy Company in any manner infringed the claims of the Blair patent as alleged in the plaintiff's complaint in said action, particu- 141
larly in that the description of the machine alleged to have infringed the Blair patent was not like or similar to any machine ever manufactured by the Rice and Adams Corporation and sold to the Bowman Dairy Company, and deponent specifically asserts that the machine or machines alleged by said plaintiff in the said Chicago action have never been seen by deponent, or any member of deponent's firm, so as to know or to become acquainted with, in any manner, the character or construction of the said machine, and that neither deponent nor

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any member of his firm had any knowledge then nor has it any knowledge now of the character of the machine which the said Bowman Dairy Company was using at the time said action of the said Lathrop was brought against the Bowman Dairy Company.

Deponent further says that on the 19th day of April, 1923, deponent went to Chicago to attend upon the trial of the said Lathrop action, which
143 deponent's firm had been advised had been peramptorily set for trial and argument on that day; that upon reaching the court room, deponent and the attorney for the Bowman Dairy Company were informed by Judge Carpenter that the said Judge did not care to listen to any oral argument of the case, as it was the custom of patent attorneys to take time thereafter and file their briefs and to say in their briefs practically all that was said upon the oral argument, and that he, Judge
144 Carpenter, preferred to read the briefs, and would give the plaintiff five days time in which to file such brief; that the Bowman Dairy Company's counsel then stated its brief for the defendant was ready to file at that time.

Deponent further says that thereupon the parties were directed to file their briefs with the Judge's Secretary and that he would dispose of the case within two weeks after the same was submitted; that deponent thereupn returned to Buffalo without any further knowledge in regard to said suit than he had learned from the testimony and other papers which had been filed with the

Court, until (8) months later, to-wit: on or about December 10th, 1923, when deponent was advised by the Bowman Dairy Company's counsel, Messrs. Montgmery, Hart & Smith, that Judge Carpenter had changed his mind with reference to an oral argument of the case and decided that the same be orally argued instead upon the submission of briefs, but neither deponent nor any member of deponent's firm desired, nor did either of them again go to Chicago or take any part whatsoever in the argument of the said case, and the only knowledge that deponent has as to what took place was from third parties and mere hearsay.

Deponent further says that he did not again hear of the case until on or about the 12th day of January, 1924, when deponent was advised that the District Court of Illinois had decided the case but had denied to the plaintiff any right of accounting or injunction and had indicated the desire to uphold the validity of the patent for the express purpose of having the same reviewed by the Circuit Court of Appeals and had advised the attorneys before him to take such appeal. Thereafter deponent was surprised to learn that an interlocutory decree had been entered.

Deponent further says that not until March 26th, 1924, did deponent see or know that an interlocutory decree had been entered in the Lathrop case, at which time deponent first learned of the terms of said decree.

Deponent further says that when he first learned

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that a decision had been rendered by the Court and sometime in the early part of February, 1924, that he advised the Rice & Adams Corporation to cease to manufacture or sell any machine having the drip pan feature attached, even though it was deponent's opinion that the decision in the Illinois Lathrop case did not establish that the Rice & Adams Corporation was infringing the so-called Blair patent, the subject of that suit; that the
149 question of business policy arose as to whether the Rice & Adams Corporation should protect its customers against suits for alleged infringement, and it was finally determined and deponent advised the officers of said Rice & Adams Corporation that it should so protect its customers and that if other suits were to be started against customers in various districts of the United States, the cost of defending such suits would be considerable and that if a settlement could be made which would prevent the commencement of such suits, deponent
150 advised that some sum be offered Mr. Potts, Lathrop's attorney, to prevent such actions from being commenced to harass customers of said Rice & Adams Corporation. Accordingly deponent requested the attorneys for the Bowman Dairy Company to make overtures to Mr. Potts, to see what could be done, and on May 6th, 1924, deponent went to Chicago to see Mr. Potts in regard thereto.

Deponent further says that at said interview deponent stated plainly to Mr. Potts that if Mr. Potts would bring an action in the Western District of New York against our client, where the

issues could be squarely met and a full and fair hearing had, that we would not pay him or his client a single dollar, but if our customers were going to be interfered with by starting separate actions in various districts, wherever a machine could be found that had been sold by our client, we would be willing to pay what it would cost us to defend such customers, and deponent thereupon offered said Potts Two thousand two hundred fifty ($2,250.00) Dollars to release the Rice & Adams Corporation from the chance of such law suits, and thereafter deponent authorized the attorneys for the Bowman Dairy Company to increase that sum to Two thousand five hundred ($2,500.00) Dollars, which was one-half of the counter offer made by Mr. Potts for such release.

Deponent further says that Mr. Potts declined the offer and thereafter wrote letters around the country to the custmers of the Rice & Adams Corporation, including many who had never purchased a machine having a drip saver attached, and threatening suit; a copy of one of such letters is attached hereto and made a part hereof, and marked Exhibit "A"; that deponent is informed and verily believes that said Potts or his client Lathrop also furnished information to various publications, including the Lactonews, published in Pennsylvania, which latter is an important advertising medium for maufacturers of milk machinery that the Rice & Adams Corporation had been defeated in an action by the Lathrop-Paulson Company of Chicago, and that thereupon said Lac-

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tonews published such articles and the same was libellous and was withdrawn by the said Lactonews upon notification by deponent of the libellous character of the publication.

Deponent further says that on August 16, 1924 deponent wrote said Potts a letter, a copy of which letter is hereto attached and hereby made a part hereof, and marked Exhibit "B," notifying said Potts of the threatening character of his letters
155 and of our intention to submit such letters to the proper authorities for action, if he continued the campaign which he had started.

Deponent further says that from a careful study of the proceedings in the Lathrop action in Chicago, he is of the opinion that the decision of that Court was made without full consideration of the case, without a properly prepared argument and with the express intention of having the case reviewed by the Circuit Court of Appeals, and that because the Rice & Adams Corporation was not a
156 party to said suit at the time of the entry of the decree, it could not appeal to the Circuit Court, and deponent further says that an endeavor on behalf of the Rice & Adams Corporation to be permitted to take such appeal, and an application therefor, was made to Judge Carpenter for that purpose and was denied by him, so that deponent asserts that the Rice & Adams Corporation has never been in position to compel an appeal for the purpose of reviewing the decision of the District Court for the Northern District of Illinois, Eastern Division, and that the action brought and now

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pending in this Court is the first opportunity that defendant has had to fully submit the question of infringement of the so-called Blair patent to a Court for determination.

FRED'K G. MITCHELL.

Subscribed and sworn to before me
this 30th day of January, 1925.

C. E. MAYER,
Commissioner of Deeds,
in and for the City of Buffalo, N. Y.

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EXHIBIT A

July 11, 1924.

Dairymen's League,
120 West 42nd Street,
New York, New York.

Gentlemen:

I am informed that you are using a number of CAN WASHING MACHINES purchased from Rice & Adams Corporation, that are a direct infringement of United States Letters Patent, granted James R. Blair for CAN WASHING MACHINES, No. 880,713, dated March 3, 1908, and owned by my client, Harry D. Lathrop.

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You are hereby notified to discontinue the use of said infringing machines at once and render an accounting for all of the profits that you have made by reason of their use, or suit will be instituted, asking for a preliminary and permanent injunction, and an accounting for all profits and damages.

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Exhibit A

If you wish to settle the matter without a suit, my client is willing to settle for $200.00 per machine and grant you a license to continue the use of the infringing machine during its life, without the payment of further royalties.

I am enclosing herewith a copy of the final decree in the case of Harry D. Lathrop vs. Bowman Dairy Company, in the United States District Court, Northern District of Illinois, Eastern Division, in Equity No. 2239, holding the Blair Patent valid and infringed by using machines manufactured and sold by Rice & Adams Corporation. This case was bitterly contested and the defendant must have spent many thousands of dollars in defending this suit.

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Your attention is also called to the decree in the case of Harry D. Lathrop vs. Davis-Watkins-Dairymen's Manufacturing Company, in the United States District Court, in Equity No. 1166, holding the said patent valid and infringed, since which time that company has been operating under a license from my client.

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Awaiting your prompt response as to your intentions in this matter, I remain,

Very truly yours,

(Signed) JOSHUA R. H. POTTS.

SCHEDULE "B" 163

August 16, 1924.

Mr. Joshua R. H. Potts,
Suite 1500 Burnham Bldg.,
N. W. Corner LaSalle & Randolph Sts.,
Chicago, Ill.

Dear Sir:

It has been brought to our attention that you have written many letters to varius customers of the Rice & Adams Corporation throughout the United States, which letters have either been for- 164
warded to us or copies thereof.

We have given the matter very serious consideration and have reached the conclusion that these letters are intended to be and are threatening in their nature and damaging to our clients, Rice & Adams Corporation. The letters are being sent to customers of our client who have never purchased a machine of the character you describe nor have in any way infringed the patent which you describe in your letters.

You were thoroughly advised before you wrote 165
the letters that the customers in question were not using the machines and in no manner were affected by the Bowman Dairy Company decision. Despite this fact, your letters indicate clearly an attempt to threaten and, if possible, to injure the business of Rice & Adams Corporation in the interest of a competitive company which you represent.

We believe that you are violating the Postal Laws of the United States and other Federal Laws, and unless you at once refrain from this

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unwarranted and unlawful procedure, we shall be compelled to present the matter to the proper officers for such action in the premises as they shall deem advisable.

Yours very truly,

FGN:B.

IN THE UNITED STATES DISTRICT COURT

167 WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,

vs.

RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No 793-D

AFFIDAVIT

168 STATE OF NEW YORK }
County of Erie } ss.

I, FELIX E. PROCHNOW, being duly sworn, depose and say that I am 39 years of age and am a graduate in electrical engineering of the University of Toronto, and had about two years practical experience in mechanical and electrical engineering before beginning the practice of patent law in the year 1909, and since that time have been continuously engaged in such practice and have prosecuted numerous applications for

patents in the United States Patent Office and Foreign countries; have frequently been called upon to give my opinion on questions of infringement and validity of patents, and have acted as expert in patent cases.

I have examined the Blair patent in suit, No. 880,713, dated March 3, 1908, and understand the same. The specification of the patent states that the invention relates to aparatus for washing milk and other cans, pails and receptacles of various types. The claims relied on, to wit, numbers 2, 3, 4, 9, 10, 11, 12 and 13, all recite a receptacle washing apparatus. The drawings and specification of the patent show and describe a receptacle washing machine of a type well known at the date of the application of the Blair patent and disclosed in several prior patents, in which the receptacles are moved in an inverted position, or mouth-downward, one after another over and past a succession of devices which discharge fluid into and against the outer surfaces of the receptacles for washing or cleaning and sterilizing them. Receptacle washing machines of this type are shown in the following patents:

498,549	Hodgdon	May, 30, 1893
546,205	Van Gilder	Sept. 10, 1895
745,752	Adams & Rice	Dec. 1. 1903
764,222	Adams & Rice	July 5, 1904
850,199	Wright & Wright	Apr. 16, 1907
864,131	Hood	Aug. 20, 1907
864,132	Hood	Aug. 20, 1907

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As disclosed in the Blair patent, the receptacles pass through an open ended, straight hood or chamber which prevents the escape of the cleaning media, and vats are provided beneath the moving receptacles, a portion of the washing fluid for the receptacles being taken from these vats and circulated by pumps so that the washing fluid can be recirculated and used over and over again to prevent waste, and to utilize to the maximum the
173 soap or cleansing medium which is used in the washing fluid.

The prior patents above mentioned show that machines of this same type for washing cans or other receptacles, and including all of these features, were known and patented before the application for said Blair patent was filed.

The Blair patent, therefore, if it discloses any novelty, is only for a particular construction of an old and known type of machine, that is the particular combinations of parts set forth in the several
174 claims of the patent. The machine shown and described in the Blair patent is provided with a horizontally disposed, endless chain carrier 11 upon which the cans or receptacles are placed and supported mouth-downward, and which carries the receptacles through the hood 36 and past the fluid discharging or cleaning devices. At the front end of the machine the endless carrier projects out in advance of the hood 36, and a drip pan or receptacle 41 is arranged beneath the upper run of the endless carrier for the purpose of catching

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any liquid dripping from the inverted receptacles.

The carrier, adapted to support and carry the receptacles past the cleansing instrumentalities, and also the drip receptacle is included in combination with various other features in each one of the claims 2, 3, 4, 9, 10, 11, 12 and 13 relied upon.

I have read the interlocutory and final decrees entered in the suit in the United States District 176
Court for the Northern District of Illinois, Eastern Division, entitled Harry D. Lathrop vs. Bowman Dairy Company, in Equity No. 2239, and also the affidavits filed by plaintiff in support of his motion for preliminary injunction in the present cause, to wit, the affidavit of Harry D. Lathrop subscribed Jan. 14, 1924, and two affidavits of Joshua R. H. Potts, each subscribed the 28th day of January, 1925. The statement in the Lathrop affidavit:

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> "The feature of said machines which were held to infringe said Blair patent was the drip saver or the arrangement at the entry end of the machine whereby the drippings from the cans or receptacles being washed are saved uncontaminated by the washing fluid."

and the statement on page 9 of the Potts affidavit, that

> "the arangement at the entry end of the machines for catching and saving the milk or cream dripping from the cans * * * * was the

178 feature, and the only feature of said machine which was held to infringe."

are not in accord with said decrees. There is no such holding of infringement in either decree. The interlocutory decree with reference to infringement reads:

"That the defendant, the Bowman Dairy Company, a corporation, has infringed upon said Letters Patent, and particularly upon
179 the said claims 2, 3, 4, 9, 10, 11, 12 and 13, and upon the exclusive right of the plaintiff under the same."

The final decree entered May 13, 1924, reads:

"it appearing to the Court that an interlocutory decree was entered herein on Jan. 21, 1924, holding the patent to James R. Blair for can washing machines No. 880,713, dated March 3, 1918, and said James R. Blair to be
180 the sole, original and true inventor of the subject-matter thereof, good and valid in law and infringed by the defendant, the Bowman Dairy Company, as to claims 2, 3, 4, 9, 10, 11, 12 and 13 * * * * it further appearing that said defendant has used and is now using three such machines infringing upon said patent."

There is no claim in the Blair patent broadly covering a drip pan or receptacle alone or disassociated from other structural features disclosed in the patent.

Each of claims 2, 3, 4, 9, 10, 11 and 12 specifies

among other elements, a vat, and also an endless carrier. 181

Claims 2 and 3 specify the endless carrier as having an operative run supported above the vat and adapted to receive receptacles supported mouth-downward thereon.

Claims 4 and 9 specify the endless carrier as comprising laterally spaced portions or members whereon the receptacles may be positioned or supported mouth-downward, or to span the carrier. 182

Claims 10, 11 and 12 specify the endless carrier comprising laterally spaced members adapted to receive thereon receptacles to be cleansed, said endless carrier having an upper horizontal run projecting beyond said vat at the intake end thereof.

Claim 13 sets forth (1) a support (2) a carrier adapted to receive receptacles thereon (3) cleaning medium pipes having discharge orifices directed toward said receptacles positioned thereon (4) means adapted to receive from the receptacles 183 when positioned upon the carrier the material contained in said receptacles and discharged therefrom when said receptacles are positioned upon said carrier.

Claim 4 specifies a vat having compartments therein and each of claims 10, 11 and 12 specifies a vat having a plurality of compartments.

Claim 4 specifies a cleansing fluid circulating system connected to each compartment.

Claim 9 specifies a vat having a circulating system including a pump.

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Each of claims 10, 11 and 12 specifies a circulating system connected to each vat.

Each of Claims 10, 11 and 12 specifies means for heating the contents of one or more of said vats.

Each of Claims 9, 10, 11 and 12 specifies opposed upright discharge pipes having lateral facing discharge openings.

Claims 2 and 3 also specify cleansing medium
185 pipes within said vat and directed toward the interior of said receptacles.

Still other features are specified in some of the claims.

I have examined exhibits numbers 4, 5, 6 and 8 filed herein and mentioned in the affidavits of Joshua R. H. Potts subscribed Jan. 28, 1925, as being introduced in evidence in the case of Harry D. Lathrop vs. Bowman Dairy Company, to prove the character of the alleged infringing machine. These several exhibits show machines of different
186 construction in various essentials and are not in conformity with each other. They do not show, whether considered collectively or individually, the combinations of elements set forth in any of claims 2, 3, 4, 9, 10, 11, 12 and 13, relied upon of the Blair patent.

None of the exhibits shows an endless carrier or carrier adapted to receive thereon and carry the receptacles as set forth in claims 2, 3, 4, 9, 10, 11, 12 and 13 of the Blair patent; none of them discloses cleansing medium pipes within the vat and directed toward the interior of the recepta-

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cles, set forth in claims 2 and 3; none of them discloses the upright opposed discharge pipes having lateral facing discharge openings, as set forth in claims 9, 10, 11 and 12, and none of them discloses other features above stated to form a part of the claims relied upon.

I am unable to find in any of the exhibits the construction set forth in any one of the claims 2, 3, 4, 9, 10, 11, 12 and 13 relied upon, and in my opinion a machine constructed in accordance with the showing in any one or all of these exhibits would not infringe any of the claims 2, 3, 4, 9, 10, 11, 12 and 13 of the Blair patent.

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Exhibit No. 4 contains a description reading:

> "In the R. & A. hydraulic can washer the cans are fed through the machines by pusher dogs as shown in the illustration. There are two pusher bars, one for the cans and one for the covers, running the entire length of the machine and to which the 'dogs' are fastened. The pusher bars move forward and back and with each forward motion of the 'dogs' catch the cans and covers and advance them one position."

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Insofar as the construction of the feeding mechanism can be determined from the exhibits, the cans are supported mouth-downward on a stationary track and are shoved along the track by the above mentioned reciprocating dogs.

Drip pans or receptacles for catching or saving milk or other liquids dripping from milk cans or

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other receptacles were commonly known long before the application of the Blair patent in suit, and drip pans for catching and directing to a desired point the drippings from milk cans or receptacles in can and receptacle washing machines are disclosed in the following patents:

498,549	Hodgdon	May 30, 1893
781,692	Stubbs	Feb. 7. 1905
850,199	Wright & Wright	Apr. 16, 1907
191 864,132	Hood	Aug. 20, 1907

Devices for catching and saving liquids dripping from inverted cans and other analogous receptacles are also disclosed in the following patents:—

483,757	Allgood	Oct. 4, 1892
505,208	Wayandt	Sept. 19, 1893
639,378	Groterjan	Dec. 19, 1899

These patents were not cited nor considered in the Lathrop vs. Bowman Dairy Company suit.

192 In my opinion, it would not involve invention or be patentable in view of such patents to provide a drip pan or receptacle under the carriers, or at the front ends of the receptacle washing machines shown in patents to

498,549	Hodgdon	May 30, 1893
546,205	Van Gilder	Sept. 10, 1895
745,752	Adams & Rice	Dec. 1, 1903
764,222	Adams & Rice	July 5, 1904
850,199	Wright & Wright	Apr. 16, 1907
864,132	Hood	Aug. 20, 1907

to catch and save the liquid dripping from the machines when they are placed mouth-downward in the front end of such machines. 193

Patent No. 240,404, Gibbs, April 19, 1881, also not cited nor considered in the Lathrop vs. Bowman Dairy Company suit, shows a dish washing machine comprising a series of three tanks in which the dishes are placed and washed one after another. This patent also discloses at the front end of this machine in advance of the washing instrumentalities, a drip catching device P for catching liquid dripping from the receptacle R before the latter is placed in the first washing tank. The patent also discloses a similar drip catching device H at the rear end of the machine beyond the last washing tank for catching the drippings from the receptacle R after it has been removed from the last washing tank. This patent thus shows the combination in a receptacle washing machine of a series of washing instrumentalities in which the receptacles to be cleaned are placed and washed successively, and devices for catching the drippings from the receptacles to be washed, arranged in advance of the washing instrumentalities. 194 195

In view of the state of the art at the time of the application of the Blair patent in suit, as shown by the patents above mentioned, the claims of the Blair patent relied upon, if valid, are entitled only to a limited construction, and would not be infringed by a machine which is not provided with an endless carrier, or carrier adapted to receive, support and carry the receptacles and constructed

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substantially as disclosed in the Blair patent and set forth in claims 2, 3, 4, 9, 10, 11, 12 and 13 thereof.

FELIX E. PROCHNOW.

Subscribed and sworn to, before me, this 31st day of January, 1925.

MILDRED J. PITMAN
Notary Public

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NEW YORK

HARRY D. LATHROP,
Plaintiff,
vs.
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.
In Equity No. 793-D

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AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF ERIE } ss

Barton A. Bean, Jr., being duly sworn, deposes and says that he is an attorney at law and that in the case of Harry D. Lathrop vs. Bowman Dairy Company, in the United States District Court for the Northern District of Illinois, Eastern Division, he took a considerable portion of the testimony

on behalf of the defendant and is familiar with the trial of that action and made the final argument in said cause before his Honor, Judge George A. Carpenter, at Chicago;

That in said case there were substantial defenses of prior invention and of prior use; that all of the evidence in said cause was submitted in deposition form and that on or about April 1923 deponent, together with other counsel from Buffalo, at the order of his Honor, Judge Carpenter, proceeded to Chicago to present final argument in said cause; that a hearing was not had at that time, the Court stating, substantially, that it could not give the time for such hearing on that date, and requesting that the case be submitted on brief so that it could quickly decide the case; that the case was submitted on brief but no decision was rendered at this time, and approximately nine months later a request was made by Judge Carpenter that counsel attend and argue the case before him; that deponent was engaged at such time on a case at Salt Lake City, Utah, and in accordance with the Court's request proceeded to Chicago, arriving just in time for the argument; that during the course of the argument Judge Carpenter seriously questioned the inventive character of the patent in suit but would not decide that the patent was invalid, stating that the case should be settled by the Court of Appeals, and finally holding that as the patent was prima facie valid, he would not disturb that status and urged that counsel get the case to the Court of Appeals as

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soon as possible; so far as deponent is aware, the case did not go to the Court of Appeals, but was settled out of Court subsequent to Judge Carpenter's holding; that the Judge did not render any written decision on the case, which written decision would have been illuminative as to the status of the patent, and his view of the defenses urged against the patent;

That deponent has examined the supplemental
203 affidavit of Joshua R. H. Potts, subscribed and sworn to the 28th day of January, A. D. 1925, and says that he is familiar with plaintiff's exhibit 4 referred to in said affidavit; that there was no holding in the Lathrop v Bowman Dairy Company case referred to in said affidavit to the effect that Plaintiff's exhibit 4 illustrated and described the machine complained of as being infringed or held to be infringed in said suit; that in said suit there were other exhibits introduced in evidence by the plaintiff, to wit, exhibits Nos. 5, 6 and 8, as show-
204 ing the alleged infringing structure and that such exhibits and plaintiff's exhibit 4 differ and are inconsistent, and that there was no ruling by the Court in said Lathrop v Bowman Dairy Company suit that any one of these exhibits illustrated the machine complained of or illustrated any machine held to be an infringement of the Blair patent in suit;

That deponent has read and understands the affidavit of Harry D. Lathrop filed herein and says that there was no holding, ruling or decision by Judge Carpenter in the Lathrop v Bowman

Dairy Company case that the feature of the machines which were held to infringe the said Blair patent was the "drip saver" or the arrangement at the entry end of said machine whereby the drippings from the cans or receptacles being washed are saved uncontaminated by the washing fluid, as alleged in said Lathrop affidavit, but the decree in said Lathrop v Bowman Dairy Company case held that claims 2, 3, 4, 9, 10, 11, 12 and 13 of said Blair patent were infringed, and each of these claims sets forth a combination of elements in which the drip saver is only one feature; 205 206

That he has read the final decree entered in said suit of Lathrop v Bowman Dairy Company and the statement in said final decree "it appearing to the Court that an interlocutory decree was entered herein on January 21, 1924 holding the patent to Blair for can washing machine, No. 880,713 * * * infringed by the defendant, the Bowman Dairy Company as to claims 2, 3, 4, 9, 10, 11, 12, 13 by using the can washing machine manufactured and purchased from Rice & Adams Corporation", is not in accordance with the interlocutory decree; that the interlocutory decree contained no statement whatsoever with reference to the manufacture of the infringing machine by Rice & Adams Corporation; that the final decree was not submitted to deponent for approval as to form and that he did not know that the statement with reference to the manufacture of the machines by the Rice & Adams Corporation appeared in the decree until after it was entered, and that such state- 207

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ment was not in the interlocutory decree, as alleged in the final decree;

Further deponent saith not.

BARTON A. BEAN, JR.

Subscribed and sworn to before me this 30th day of January, 1925.

ALICE B. PRITCHARD
Notary Public

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
vs.
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No. 793-D

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AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF ERIE } ss

ORLANDO ADAMS, being duly sworn, deposes and says that he is the affiant whose affidavit subscribed and sworn to the 26th day of January, 1925, was filed in the above entitled suit; that he has examined the Exhibits numbers 4, 5, 6 and 8,

mentioned in the affidavits of Joshua R. H. Potts filed herein and subscribed the 28th day of January, 1925; that he is familiar with the machines manufactured and sold by Rice & Adams Corporation, the defendant in the above entitled cause; that since January 21, 1924, the date of the interlocutory decree in the suit in the United States District Court for the Northern District of Illinois, Eastern Division, entitled Harry D. Lathrop vs. Bowman Dairy Company, in Equity No. 2239, said Rice & Adams Corporation has not made, used or sold any machine constructed as shown in any of said exhibits numbers 4, 5, 6, and 8; that said Company has never manufactured any can washing or other machine constructed as shown in the plaintiff's exhibit No. 8, referred to in said affidavit of Joshua R. H. Potts; that said exhibits 5 and 6 do not represent the same machine, but illustrate machines of entirely different constructions, and that exhibit No. 4 illustrates a machine which is essentially different in construction from the machines shown in each of the other exhibits numbers 5 and 6.

211 212 213

ORLANDO ADAMS

Subscribed and sworn to, before me, this 31st day of January, 1925.

ALICE B. PRITCHARD
Notary Public

214 **Opinion Denying Motion for Preliminary Injunction**

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,

against

RICE & ADAMS CORPORATION,
215 a Corporation,
Defendant.

Joshua R. H. Potts, Esq., Chicago, Ill, for Plaintiff.

Mitchell & Staples, Buffalo, New York, for Defendant.

Motion for injunction pendente lite.

The patent in suit expires next month. This action against the defendant corporation, charging
216 infringement, was brought last month. The patent was held valid and infringed in an action against a customer of defendant in the District Court of Illinois on January 21st, 1924. It is true that defendant here was in privity therewith and ordinarily in the circumstances a preliminary injunction would not be denied in another suit against the manufacturer of the infringing device, but in the present case, the plaintiff has delayed enforcing his rights against the manufacturer, the vendor, until within a very short time of the expiration of his patent, and the suggestion in opposition

that the restraining order is intended to be used by plaintiff for advertising its machine is not without force. Defendant satisfactorily shows that it has not made or sold any can washing machines embodying a drip saving device since the decree in the Illinois case was announced. On a motion for preliminary injunction pendente lite, the court is required to consider the position of the parties and the injury or benefit which, as said in Westinghouse Air Brake Co. vs. Carpenter, 32 Fed. 484, may result to either from the granting or the refusal of the injunction. I do not think that injury will result to complainant by refusal to grant the injunction at this time. Infringement has ceased and the responsibility of the defendant is unquestioned, and the recovery of damages, I think, is sufficient protection for past infringements. See also Rousso vs. Barber, 276 Fed. 552. And furthermore, the alleged infringement of the claims relied on is strongly denied, and other patents not before the court in the Illinois case are urged as anticipatory, but as to the denial of infringement and reading of other prior patents, I express no conclusion.

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For the reasons stated, the motion for preliminary injunction is denied.

DATED February 9, 1925.

JOHN R. HAZEL,
D. J.

220 **Order Denying Motion for Preliminary Injunction**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP, Plaintiff, *against* 221 RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D.*

The above cause having come on to be heard on the 21st day of January, 1925, on motion of the plaintiff for a preliminary injunction in accordance with the prayer of the bill of complaint herein, and upon affidavits and exhibits filed by the plaintiff and the defendant, and Joshua R. H. Potts, attorney for the plaintiff, having been heard
222 in favor of said motion, and Charles J. Staples and Charles W. Parker, of counsel for the defendant appearing specially, having been heard in opposition thereto, and the Court having fully considered the same.

Now, on motion of Mitchell & Staples, attorneys appearing specially herein, it is hereby

Ordered that the plaintiff's motion for a preliminary injunction be and it hereby is denied.

Dated, Buffalo, N. Y., March 3rd, 1925.

JOHN R. HAZEL,
District Judge.

Affidavits and order to show cause why cause should not be transferred from Equity to Law Side of Court, and extending time to answer

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HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No. 793-D.

224

On reading and filing the affidavit of Wm. P. Conley, verified on the 4th day of March, 1925, from which it appears that the plaintiff's motion for a temporary injunction herein has been denied and that the plaintiff has an adequate remedy at law for damages, and that the defendant's time to answer or otherwise plead herein will expire on the 11th day of March, 1925, and on the bill of complaint and affidavits read on the motion for a temporary injunction, and on all the papers filed and proceedings heretofore had herein.

225

Now, on motion of Mitchell & Staples, appearing specially herein, it is hereby

Ordered, that the plaintiff show cause before this Court on the 17th day of March, 1925, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made herein transferring this cause from the equity side of the Court to the law side thereof, and for such other, further or different relief as

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to the Court shall seem proper and competent to grant in the premises, and it is further

Ordered, that the defendant's time to answer or otherwise plead or move herein, be and it is hereby extended until the hearing and determination of this motion, and it is further

Ordered, that service of this order by mail on Joshua R. H. Potts, Esq., Solicitor of the plaintiff, on or before the 7th day of March, 1925, addressed to him at 160 N. LaSalle St., Chicago, Ill., shall
227 be deemed sufficient service thereof.

Dated, Buffalo, N. Y., March 5th, 1925.

JOHN R. HAZEL,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

228

HARRY D. LATHROP, Plaintiff, *against* RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D.*

State of New York
County of Erie } ss.
City of Buffalo

Wm. P. Conley, being duly sworn, deposes and

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says: that he is a member of the firm of Mitchell & Staples, attorneys at-law, of Buffalo, N. Y., who have heretofore appeared specially in the above entitled action on behalf of the defendant therein; that the complainant's bill herein was filed on the 21st day of January, 1925, and was served with an Equity Subpoena on the said defendant on that day.

Deponent further says that a motion for a temporary injunction herein was filed on the 23rd day of January, 1925, returnable on the 26th day of January, 1925; that said motion came on to be heard on January 31st, 1925, and deponent's said firm appeared specially for the said defendant in opposition to said motion, and that thereafter said motion was denied, and that an order of this Court denying complainant's said motion for a temporary injunction was made and filed on the 3rd day of March, 1925. 230

Deponent further says, on information and belief, that the patent for the infringement of which said suit was brought has already expired, or is about to expire. 231

Deponent further says that on the 31st day of January, 1925, the complainant's attorney executed a written consent to an extension of thirty days for defendant to answer or otherwise plead herein, and that an order has been made herein extending defendant's time to answer or otherwise plead herein to the 13th day of March, 1925.

Deponent further says that the plaintiff has no grounds for invoking the equitable jurisdiction of

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this Court; the motion for an injunction having been denied and the Court having held in effect, among other things, that if the plaintiff has any cause of action herein, he has an adequate remedy at law for damages.

Deponent further says that the defendant desires to have this case transferred to the law side of the Court, and fears that its time to answer or otherwise plead herein may expire before a hearing and determination can be had on a motion for
233 that purpose, and that the filing of an answer before the determination of such motion might be deemed a waiver of its objection to the equitable jurisdiction of the Court herein, and, therefore, prays that the filing of an answer may be deferred until the hearing and determination of such motion.

Deponent further says that no other application has been made for the relief herein sought.

WM. P. CONLEY.

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Subscribed and sworn to before me
this 4th day of March, 1925.

M. A. SULLIVAN,
Commissioner of Deeds
in and for the City of Buffalo, N. Y.

Opinion of District Court Denying Motion to Transfer Cause 235

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
vs.
RICE & ADAMS CORPORATION,
a Corporation,
Defendant. 236

Joshua R. H. Potts, Chicago, Illinois, for Plaintiff.

Mitchell & Staples, Buffalo, New York, for Defendant.

Hazel, District Judge — This is a motion to transfer the above entitled action to the law side of the court. It is an action to restrain infringement of a patent owned by plaintiff, and a preliminary injunction was demanded, but upon hearing the motion it was ruled that since the patent would expire within a short time, and as it was denied that defendant sold the infringing washing machines, an injunction pendente lite should be denied. There had been a prior decree in the District Court of Illinois in an action against a customer of defendant wherein the patent in suit was held valid and infringed and it appeared that defendant here was in privity therewith. In the circumstances plaintiff had a right, at the time 237

238 Opinion of District Court Denying Motion to Transfer

this action was instituted, to commence in equity and to assert that right to an injunction existed. The cases cited by defendant on the point that an adequate remedy at law existed at such time and a remedy at law only existed, are not strictly in point. As said in W. W. Sly Mfg. Co. vs. Cent. Iron Works, 201, Fed. 683:

> "If, however, facts existed when suit was commenced which might, in any view,
239 sustain an injunction, the question is not then one of jurisdiction, but one of discretion in the exercise of jurisdiction."

Moreover, the bill seeks to recover an accounting for profits and damages and accordingly the injunction was not the only equitable relief sought. Clark vs. Wooster, 119 U. S. 322; Tompkin vs. International Paper Co. 183 Fed. 773; Standard Fashion Co. vs. Magrane Houston Co., 259 Fed. 793; Bradner Adjustable Hanger Co. vs. Waterbury Button Co., 106 Fed. 735. And in Kittle vs.
240 DeGraaf, et al., 30 Fed. 689, Judge Cox substantially said that the fact that the patent in that case expired three weeks after the commencement of the action, standing alone, would not be sufficient ground to deny equity jurisdiction; that as the allegations of the bill entitled complainant to equitable relief at the time the action was brought, though only for a short period and on narrow grounds, the cause should not be dismissed. There are many adjudications that uphold this view. I must therefore hold that the relief sought in the bill was grantable and it was only denied by the

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court in the exercise of its discretion, and the requested transference to the law side under Equity Rule 22 must be denied.

Dated, May 2, 1925.

JOHN R. HAZEL,
District Judge.

Order denying motion to transfer cause from Equity to Law Side of Court 242

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No. 793-D.

243

A motion having been made in this case to transfer said cause from the equity to the law side thereof, returnable on the 17th day of March, 1925, and after hearing counsel for the plaintiff and the defendant and due consideration having been had thereon

Now, on motion of Joshua R. H. Potts, attorney for the plaintiff,

It Is Hereby Ordered that the said motion of the said defendant to transfer said cause from

244 Clarence Edward Threedy

equity to the law side of the court be and the same is hereby denied.

Dated, October 13, 1925.

JOHN R. HAZEL,
District Judge.

Filed October 13, 1925.

Plaintiff's Depositions de bene esse

245 CLARENCE EDWARD THREEDY

Clarence Edward Threedy, being produced as a witness in behalf of plaintiff, after being first duly sworn in response to interrogatories of counsel, testified, as follows:

Direct Examination by Mr. Richards:

Q. 1. State your name, age, residence and occupation, please.

246 A. Clarence Edward Threedy; 30 years old; residence 1240 Lill Avenue, Chicago, Illinois; patent specification writer.

Q. 2. Where are you now employed?

A. Victor J. Evans & Company.

Q. 3. Chicago?

A. Chicago.

Q. 4. Where were you employed in 1921?

A. With Joshua R. H. Potts, Chicago.

Q. 5. I will ask you to state whether or not at about the last mentioned date, you paid a visit to a plant of the Bowman Dairy Company in Chicago

A. Yes.

Q. 6. When was it that that visit was paid?

A. About April 29, 1921.

Q. 7. And as near as you can state, where was that plant located?

A. On the South Side—some place on Wentworth Avenue, I believe.

Q. 8. Chicago, Illinois?

A. Chicago, Illinois.

Q. 9. And please state whether or not you saw 218
a milk can washing machine in operation there on that date. Please answer that yes or no.

A. Yes.

Q. 10. Can you describe that machine that you saw there on that day briefly?

A. Yes, sir, briefly.

Q. 11. Please do so.

A. The machine was constructed to receive a can in inverted position at one end which constituted the receiving end of the machine, and was intermittently removed in inverted position along 219
the machine to an end of the machine known as the discharge end of the machine. The can passed over a drip pan which received milk drippings from the can draining therefrom because of its inverted position. This drip pan was positioned under the machine adjacent the track-way over which the can was intermittently moved. The drip pan had an inclined bottom at its lowest point from which the milk drippings were drained from the can to a can under the machine, for the purpose.

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Q. 12. Do you think you would recognize a cut or picture of that machine if you saw one?

A. Yes, sir.

Q. 13. I hand you a cut or picture of a machine marked Plaintiff's Exhibit No.

By Mr. Staples: There are no exhibits in yet if you please. I wish you would not refer to any exhibits until offered.

By Mr. Richards: Now marked for identi-
251 fication, Plaintiff's Exhibit No. 5, and ask you to state whether or not you recognize the same.

By Mr. Staples: I ask that you have these exhibits marked in their order to avoid confusion. I would like to get your identification for the exhibits.

A. I do.

By Mr. Richards: Counsel for plaintiff regrets that he is unable to accommodate coun-
252 sel for defendant in this regard, inasmuch as it is deemed advisable both for the convenience of the court and the parties hereto to have the exhibits which are introduced in evidence in this case, and which are the same as the exhibits which were introduced in evidence in the case entitled "Lathrop v. Bowman Dairy Company, in Equity No. 2239, in the United States District Court, for the Northern District of Illinois, Eastern Division," similarly numbered in both cases.

By Mr. Staples: Defendant objects to any

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irregular method of proof or the numbering of any exhibits contrary to fact, and calls the court's attention that in the irregular numbering offered, there is an obvious attempt at the outset to make reference to litigation which is not this litigation, and which I am advised has been settled.

Q. 14. What does that cut represent?

By Mr. Staples: Has this been offered in evidence?

254

By Mr. Richards: Not yet.

A. This cut represents a can washing machine substantially similar to the one I viewed at the Bowman Dairy Company's plant at Chicago.

By Mr. Staples: This is objected to and the court is requested to strike out the evidence insofar as it is a conclusion, and I call the witness' attention that we do not wish any comparisons. It is improper, and a similarity is not a description, and therefore we ask you to confine yourself to testimony of exact observations.

255

By Mr. Richards: The remarks of counsel for defendant are objected to as constituting argument with the witness, and an attempt to dictate to and control the action of the witness.

By Mr. Richards: The cut identified by the witness is offered in evidence as Plaintiff's Exhibit No. 5.

By Mr. Staples: May I ask one preliminary question?

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By Mr. Richards: Just a minute.

By Mr. Potts: You haven't made your objection yet.

By Mr. Staples: Objected to as incompetent, immaterial and evidently from the testimony of the witness a mere similarity and not a picture of the machine at the Bowman Dairy Company, and for the further reason that this exhibit appears to be a sheet from a mutiliated catalogue and no connection in the
257 evidence is given between this advertising picture and the machine attempted to be described by the witness.

By Mr. Richards: The connection will appear later.

By Mr. Staples: That is objected to as unnecessary comment by counsel. The best evidence will be the connecting link.

By Mr. Potts: Mr. Staples wants to make all the comments.

258 *By Mr. Staples*: That is voluntary comment by learned counsel, Mr. Potts.

Q. 15. I also hand you four leaves from a catalogue of the Rice & Adams Corporation, Buffalo, New York, marked for identification, Plaintiff's Exhibit No. 6, and ask you to state what that is.

By Mr. Staples: That is objected to on the ground that it is incompetent, immaterial, and in that it is a statement in the question of an assumed fact by counsel, which is not in evidence.

A. This cut illustrates a can washing machine.

259

Q 16. And how does that can washing machine illustrated in that cut.

By Mr. Staples: That is objected to.

By Mr. Richards: Just a moment! compare with or differ from the machine which you saw, as you state, in operation in the plant of the Bowman Dairy Company, Chicago, Illinois, on the occasion you have mentioned.

By Mr. Staples: That is objected to as totally incompetent, immaterial and improper, for the reason that in the question itself it states as facts, things which have not been established in the evidence. Further, it calls for conclusions, and the opinion of the witness who has not been shown to be an expert, and further it asked for a comparison with the machine which the witness said he could describe before the machine has been described, and in order to make it clear to the court and counsel, we will have no objections to the fullest description of accurate observation of the witness, but we do object to having comparisons of pictures not taken by the witness, and calling for the judgment and opinion of the witness, a thing that is particularly the province of the court, and I would like to have it understood, instead of repeating this, that all questions of comparisons and conclusions and similarities, are objected to as incompetent and immaterial, and merely a waste of time for the consideration of what the truth is in reference to a particular machine.

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By Mr. Richards: In order to save time, it may be considered and understood that the same objection is offered to each and every question asked by counsel for plaintiff, and each and every witness taken into the case.

By. Mr. Staples: And all questions calling for conclusions are under the same objection, I understand.

A. The machine illustrated in this cut does not
263 disclose so far as I can determine, a drain pan serving to catch the milk drippings from the inverted cans, which was included as a part of the machine that I viewed at the Bowman Dairy Company, Chicago.

Q. 17. The cut you refer to is the cut on the page marked "Form 233", is that correct?

A. Yes, sir.

Q. 18. I direct your attention also to the cut on the page marked "*Form 234*" and ask you to answer the same question with respect to that cut.

264 A. Why this cut illustrates a can washing machine in which there is included as a part of the machine, a drip pan serving to catch the milk drippings from inverted cans. The drip pan is similar to that one that was incorporated as a part of the machine that I viewed at the Bowman Dairy Company's plant at Chicago.

By Mr. Staples: May I have the same request for all of the answers given by the witness, to wit, that comparisons and similarities in statements of that kind, may be stricken out without repeating the request made to

strike out the evidence?

By Mr. Potts: I understood that was already in there.

By Mr. Staples: If it is, all right. It is understood that I am objecting to all comparisons and similarities.

By Mr. Richards: You may consider that such objection and such motion is introduced as to each and every question.

By Mr. Staples: With the request that it 266
be struck out when it is answered.

By Mr. Richards: And that also.

Q. 19. Did you examine that machine and did you notice whether or not it contained a manufacturer's name plate, and if so, what did you observe in this regard?

By Mr. Staples: That is objected to as incompetent and immaterial.

By Mr. Potts: I understand we have that objection in all of them.

267

By Mr. Staples: That is leading. He asks him to describe it and then he goes on and asks for particular things. It is objected to as leading.

A. Why the machine that I viewed at the Bowman Dairy Company's plant on the day I mentioned, included a name plate which was fixed to the machine in some manner, on the north side of the machine. The name plate included as a part thereof, the wording, "Rice & Adams, Buffalo."

Q. 20 You stated, I believe, that when you saw

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this machine it was in actual operation. What was it doing?

A. The machine in operation was intermittently moving cans from the receiving end toward the discharge end of the machine, the cans being in inverted position and a number of sprays were directed toward the cans for cleansing the cans, etc.

Q. 21. And what, if anything, was this drip pan which you have referred to, doing?

269 A. The drip pan that I referred to, was catching the milk drippings from the cans, as they passed through the machine from the receiving end to the discharge end.

Q. 22. And can you give us some idea as to the quantity of the milk drippings the drip pan was thus collecting?

A. I didn't quite get the question.

By Mr. Staples: That is objected to in addition to the other objections as being immaterial, and no foundation that observation was made about any quantities, and has nothing to do with an infringement suit.

270

(Reporter reads question.)

A. There was a fairly good size stream passing through the drain pipe of the drip pan, and if I recall correctly, I think the can was approximately one-half full with milk that had been caught from drippings from cans passing through the machine in inverted position.

Q. 23. And how, if you recall, were these milk cans introduced into the machine?

271

A. Well, the milk cans, after the milk had been emptied therefrom into a vat, were placed on what you might term a platform, which moving mechanism engaged the can in its inverted position and passed it through the machine.

Q. 24 I gather from your answer that it was placed thereon by a man. Is that correct?

A. Yes.

Q. 25. Was anything said on this occasion as to the quantity of milk which was being saved, and if so, what?

272

By Mr. Staples: This question is objected to, it calling for a conversation, and as leading in suggesting that there was a conversation. It is incompetent, immaterial and highly improper I think at this time of the case, and not binding upon the defendant in any way, and immaterial to the issue, and secondary proof at best, it not appearing that the person who talked is available, and it not offering any opportunity for cross-examination.

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By Mr. Potts: If counsel wants to we will subpoena all the officers of the Bowman Dairy Company.

By Mr. Staples: It is immaterial what your conversations were. It is rediculous to call for conversations when the witness is here to swear to what he himself saw and heard.

A. Yes. I was informed by a man at the plant that the quantity of milk saved amounted to approximately fifty pounds a day.

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Q. 26. Who was the man who gave you this information?

A. He was one of the workmen who was handling the milk cans, discharging the milk into a vat and placing the cans on the machine to be moved therefrom.

Q. 27. Referring now to Plaintiff's *Exhibit No. 5* which you have indentified, this consists of a single sheet of glazed paper having cuts and illustrations on opposite sides thereof, the cut and
275 illustration on one side being marked "Form *179*" and the cut and illustration on the other side being marked "*Form 180*". Is that correct?

A. Yes.

By Mr. Richards: The Exihibit No. 5, including the cuts and description on both sides thereof, is offered in evidence.

By Mr. Staples: You have offered that before.

276 *By Mr. Richards*: Oh, yes.

By Mr. Staples: Well, if it is already in, you are just merely referring to it more definitely?

By Mr. Richards: That is all.

Q. 28. The exhibit which you have identified as Plaintiff's *Exhibit No. 6*, consists of two sheets of paper insecurely fastened together so that they may become accidently easily separated, but consisting of one sheet marked on one side "*Form 235*" and on the other side "*Form 236*", and the other sheet marked on one side "Form *233*" and

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the other side "*Form 234*". Is that correct?

A. Yes, sir.

By Mr. Richards: The exhibit identified by the witness as Plaintiff's Exhibit No. 6 is offered in evidence including the cuts and printed matter thereon.

By Mr. Staples: It is understood that the same objection is offered to this exhibit as No. 5.

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By Mr. Potts: I think that has been agreed as applying to everything. It saves repeating it.

By Mr. Richards: That is all.

Cross-Examination by Mr. Staples:

XQ. 1. What is your work at the present time?

A. Patent specification writer.

XQ. 2. You have been engaged in patent work since you were how old?

279

A. I can tell you better in years than how old.

XQ. 3. Well any way?

A. Seven years approximately.

XQ. 4. And in 1921 I understand you were in Mr. Potts' office here in Chicago?

A. Yes, sir.

XQ. 5. Were you admitted to the bar at that time?

A. No. sir.

XQ. 6. Are you admitted to the bar at the present time?

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A. No. sir.

XQ. 7. You were employed by Mr. Potts in 1921, and what were you doing at that time, in 1921?

A. I was doing patent specification writing and patent office drawings, as well as attending law school.

XQ. 8. You had experience in patent office drawings at that time?

A. Yes, sir.

281 XQ. 9. You were called in at different times to observe facts in patent litigations by Mr. Potts while you were working for Mr. Potts, the plaintiff in this case, and you had

By Mr. Potts: I am not the plaintiff in this case.

By Mr. Staples: Oh no, not the plaintiff, the attorney for the plaintiff—the handsome Mr. Joshua Potts right in this room that we refer to.

A. Mr. Potts in this room, yes.

282 XQ. 10 You were doing drawing work at that time—making blue prints? ?

A. No, not making blue prints.

XQ. 11. What kind of drawings were you making?

A. Patent Office drawings.

XQ. 12. Are those accurate drawings, or rather careless drawings?

A. Accurate drawings.

XQ. 13. Had you any training in any kind of accurate drawings at all?

A. Yes, sir, I had.

XQ. 14. And your reading such law as you have read in patent office matters, has led you to see the importance of accuracy in Patent Office drawings? You realize that an inaccurate drawing has very little weight in patent matters?

A. With certain exceptions, probably.

XQ. 15. Inaccuracies in those drawings are misfortunes, are they not?

By Mr. Potts: This line of cross-examination is objected to as not being cross-examination at all, but merely a lecture to the witness. 284

XQ. 16. You do not understand that I am lecturing you, do you?

A. You might be.

XQ. 17. You do not then understand me. I want to see what your qualifications are in making observations in 1921.

A. Yes, sir.

XQ. 18. And you had had sufficient experience at that time to make accurate measurements— what other methods are there to get accuracies in machine drawings besides a rule? 285

A. There are many other methods of doing that. Close observation of the machine is one.

XQ. 19. Picture of the machine is another?

A. Yes, might be.

XQ. 20. And you cannot tell accurately about the dimensions of any machine unless you measure it?

A. No, not exactly.

XQ. 21. You cannot tell the substance of any

machine unless you take particular notice of the parts thereof, to see that it is built of this kind of iron, etc.?

A. Yes, to a certain extent.

XQ. 22. Now in 1921 was the first time you had ever gone to the Bowman Dairy Company?

A. Yes, sir, the first time.

XQ. 23. How many times have you ever been in the Bowman Dairy in your life.

A. First time as I said.

XQ. 24. Never been there since?

A. No, sir.

XQ. 25. Prior to that time had you ever seen a can washing machine in the Bowman Dairy?

A. No, sir, not in the Bowman Dairy.

XQ. 26. That is the first time you had seen the machine that you tried to describe here?

A. That particular machine, yes.

XQ. 27. How long were you in the Bowman Dairy?

A. Somewheres between an hour and a half.

XQ. 28. Did you go with Mr. Potts, the lawyer in this case and Mr. Richards? He is the lawyer who has just been asking the questions of you.

A. Yes, sir.

XQ. 29. Mr. Richards is associated with Mr. Potts here in the patent law?

A. Yes, sir.

XQ. 30. You knew why you were going to the Bowman Dairy, did you not?

A. Yes, sir.

XQ. 31. You knew you were going there to make

observations of a machine for a law suit?

A. Yes, sir.

XQ. 32. You knew you were going to be called upon to make a description of the machine when you got back?

A. Yes, sir.

XQ. 33. Therefore, you were particularly anxious to see and know definitely about that machine, were yon not?

A. I was more particular to be accurate about the machine. 290

XQ. 34 They probably told you things about what you would see before you got there, didn't they?

A. Not that I recall.

XQ. 35. Didn't they tell you about points that they were complaining about?

A. I don't recall.

XQ. 36. Would it be your best belief, going down there with Mr. Potts the patent lawyer and his counsel, Mr. Richards, as you did, and knowing that there was a patent case on and you knew you were going to be there a short time when you went? 291

A. Well, I can't say that.

XQ. 37. You may have a short time at the Bowman Dairy?

A. I can't say that.

XQ. 38. Is it your best belief that they told you this machine was defective or that it was an infringement on account of this or that or the other thing?

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A. They might have told me it was an infringement.

XQ. 39. They might have talked about infringements?

A. I said they might have.

XQ. 40. Do you remember their saying anything about a Lathrop-Paulson machine?

A. Undoubtedly they did.

XQ. 41. Didn't they?

293 A. Well they wouldn't take me out blindly as though I was going to prison or something like that. Certainly they did.

XQ. 42. Have you ever seen the Lathrop machine?

A. I can't say so, no.

XQ. 43 At the time you went there, you were not fitted to make a comparison between the machine you were about to see and had not seen, and the machine you supposed it was infringing?

294 A. I believe I saw cuts of the Lathrop-Paulson machine.

XQ. 44. So prior to this examination at the Bowman Dairy, your knowledge of the Lathrop-Paulson machine you think was an infringement, was derived from cuts and pictures?

A. From drawings, I would say, rather than cuts and pictures—patent office drawings.

XQ. 45. Had you had your attention called to any particular feature of the patent drawings of the Lathrop machine before you went to the Bowman Dairy?

295

A. I think they took the matter up, pointing out the drain pan.

XQ. 46. That was the main thing, wasn't it—the drain pan?

A. That is one part of it.

XQ. 47. That is the outstanding feature, isn't it?

A. Yes, the outstanding feature.

XQ. 48. And as you think back over years that have intervened, it is the milk pan or some kind of a drain pan that was an outstanding feature?

296

A. The incorporation of a drain pan for the purpose of catching the drippings of milk; to save the drippings of milk.

By Mr. Staples: That is what I say.

By Mr. Potts: Let the witness answer his question. I object to counsel interrupting.

By Mr. Staples: You haven't anything more to say?

Witness: Not now, no.

XQ. 49. Were Attorney Potts and his associate present all the time you were observing this machine?

297

A. Yes, sir.

XQ. 50. Was this conversation that you have been telling about going on at the time you were observing this machine?

A. Not at the time we were observing the machine.

XQ. 51. Was there anyone else present at the time you were observing the machine?

A. Yes, there was.

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XQ. 52. Did you have any difficulty in getting into the plant of the Bowman Dairy?

A. No, sir.

XQ. 53. Perfectly courteous in inviting you in there?

A. Yes, sir.

XQ. 54. What time of day was it?

A. I think it was in the morning, if I am not mistaken. Quite certain it was in the morning.

299 XQ. 55. While you were observing the machine, did you talk with Mr. Potts and his associate about parts of the machine?

A. Undoubtedly we did.

XQ. 56. Did you or did you not?

A. I wouldn't say.

XQ. 67. You are not quite clear as to what took place there?

A. Yes, sir, I am.

XQ. 68. Was the machine working all the while

300 you were there?

A. Yes, sir.

XQ. 69. Was it light?

A. Yes, sir.

XQ. 70. Could you take a picture of the machine?

A. Yes, sir.

XQ. 71. Did you take a picture of the machine?

A. I didn't. Not a photographic picture if that is what you refer to.

XQ. 72. Yes.

A. No, sir.

301

XQ. 73. Such a picture would have given the appearance of the machine, would it not?

A. Undoubtedly, it would.

XQ. 74. Did you make any measurements whatever?

A. Not measurements, no.

XQ. 75. Any notes?

A. No, sir.

XQ. 76. Now did you make any drawing of it?

A. No, sir, not out there.

302

XQ. 77. Did you make any drawing afterwards?

A. Yes, sir.

XQ. 78. An accurate drawing?

A. Substantially an accurate.

By Mr. Staples: No, not "substantially".

By Mr. Potts: I object to counsel telling the witness what language he should use in answer to the question.

XQ. 79. You used the word "substantially" in your direct testimony a number of times. What do you mean by "substantially"?

303

A. A near resemblance.

XQ. 80. Accurate?

A. No, you can't say accurate.

XQ. 81. When you describe a machine and describe it "substantially", do you have any reference to what substance the machine is made of?

A. Substantially, yes.

XQ. 82. Has your description made any reference thus far to the substance of the machine?

A. I haven't made any statement to that effect.

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If it is wood or steel, it is substantially wood or steel.

XQ. 83. Have you used the word substantially

By Mr. Potts: I object to counsel asking the witness as to what he said. He knows what the witness has said. He has been here to object to every question.

By Mr. Staples: I think the comments uncalled for. I am trying to find out what the

305 witness means by a particular word and saying

By Mr. Richards: Just a minute

By Mr. Staples: I haven't asked the question

By Mr. Richards: Just a minute

By Mr. Staples: I haven't completed my question, and I don't want two or three counsels interrupting. I want to ask the witness the meaning of his testimony and he is willing to give it to me if counsel will permit.

306 *By Mr. Richards*: Just a minute

By Mr. Staples: I am going to complete my question if I may. Do you mean when you say substantially different as you have used it in your testimony, that that has reference to and modifies your description as to the material substance the machines were made of? You understand what I mean?

A. No, I don't get the substance of the question you ask me.

XQ. 84. Now I told you, you have used the word substantially like or substantially similar, and said

307 substantially several times, and I don't know just what you mean and I am trying to find out just what you do mean. When you say it is substantially like it, you said you did not mean exactly like it.

A. No, I didn't.

XQ. 85. You didn't mean that.

A. I didn't say that. I mean by substantially that if the principal thing you refer to is wood, it is substantially wood, not iron or six inches.

308 XQ. 86. Have you given any testimony as to iron, wood or six inches thus far?

A. I am.

By Mr. Staples: Let the question be asked

By Mr. Potts: Let the witness answer his question. I object to that. Every time this witness starts to answer a question, counsel interrupts him before he gets half way through with his answer.

309 *By Mr. Staples*: Will the stenographer please read the last question asked by Mr. Staples?

XQ. 87. I refer you to the first exhibit that was shown you, which the plaintiff, for his own purposes, has numbered Exhibit 5 and refer to Figure 385 thereof, and ask you this question: Were you not asked on the direct examination, whether that showed the machine that you saw at the Bowman Dairy, and did you not answer, "It is substantially the same machine" or words to that effect? Yes or no?

A. Well I can't answer two questions by yes or

310 no. You ask two questions in one, and I can't answer that.

XQ. 88. Did you, when this Exhibit No. 5 was shown to you, say in referring to it, that the machine was substantially like the one you saw at the Bowman Dairy, or not?

A. Yes and no.

XQ. 89. They do or

By Mr. Potts: The witness may answer the question in any way he likes.

311

By Mr. Staples: Mr. Potts made that remark.

XQ. 90. Did you get the question I just asked?

A. To have a perfect understanding, suppose you ask me the question again?

XQ. 91. Have you, in reference to Plaintiff's first exhibit which is numbered No. 5, described the cut on that exhibit as substantially like the machine you saw at the Bowman Dairy?

A. I don't know as I described this cut.

312 XQ. 92. Did you or did you not?

A. I said that this machine was substantially the same as that I viewed at the Bowman Dairy plant at Chicago.

XQ. 93. And is that true—that last statement?

A. It is absolutely true.

XQ. 94. And the use that you made of substantially in reference to the testimony I have just shown you on this cut, is the use you wish to be understood by substantially?

A. That is the word I wish to use.

XQ. 95. Is there a milk saving device or drip

313

pan of any kind or nature on that Exhibit 5.?

A. Yes, there is.

By Mr. Richards: The witness is instructed that when Mr. Staples stands before him in that dramatic attitude, and shakes his fist in his face and shoves the exhibits in his face, Mr. Staples does not mean to be discourteous or attack him in any way, but it is simply his way of being emphatic and that witness need not pay any attention.

314

By Mr. Staples: The Honorable Court upon reading comments of counsel, will see how humorous the same are in fact.

XQ. 96. On Exhibit 5, Figure 386, did you or did you not decribe that as substantially the same as the Bowman Dairy machine? Yes or no?

A. Yes.

XQ. 97. On the second exhibit which was referred to by the plaintiff for his convenience as Exhibit No. 6 in describing the so-called machine of the Bowman Dairy, did you have reference to 315
the four pages of that exhibit in describing them as substantially the same as the machine you saw in the Bowman Dairy?

A. Not to the four pages, no.

XQ. 98. Did you have any reference whatever in your testimony to Figure 613?

A. No, sir, not to Figure 613.

XQ. 99. Or to anything on the page to which Figure 613 refers?

A. Only to identify that page as part of the preceding page.

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XQ. 100. You don't know of your own knowledge, anything about this Page 235?

A. No.

XQ. 101. And did you, in your testimony, have any reference to the page on which Form 236 appears, and that is the one on which plaintiff's Exhibit No. 6 appears?

A. No, sir.

XQ. 102. You did have reference, did you not, to the page in which Form 233 appears?

317 A. I did.

XQ. 103. And you did describe the machine in the Figure 545 as substantially like the machine you saw in the Bowman Dairy?

A. I did not.

XQ. 104. Did you have reference in your testimony to any thing on Page 233?

A. I did.

XQ. 105. To what did you refer in your direct-examination?

318 A. The illustration of Figure 545.

XQ. 106. That is just what I asked you. You misunderstood me here.

A. I probably did.

XQ. 107. Then I understand now, that in your direct examination you did refer to Figure 545 and did define that as substantially like the machine you saw in the Bowman Dairy?

A. No, sir.

XQ. 108. You did not? Is that substantially unlike it?

A. Substantially unlike it.

XQ. 109. And Figure 534 is substantially like or unlike? 319

A. Substantially like a can I saw out there, but otherwise not.

XQ. 110. I notice in this 434—On the machine you saw out there, was there a dog or wasn't there a dog?

A. I didn't pay particular attention whether it was a dog or pawl.

XQ. 111. Did you see any continuous endless chain in the machine you saw out there? 320

A. I didn't pay particular attention.

XQ. 112. Did you pay particular attention to the mechanism of the machine other than you have described it today?

A. That depends on what mechanism you have reference to.

XQ. 113. As to the way the cans were carried through the machine?

A. No, I didn't pay any attention to that.

XQ. 114. Now did you make a cut—drawing? 321

A. Yes, I made a drawing.

XQ. 115. Have you that here?

A. I have not.

XQ. 116. How long after you made that drawing, how long was it after you saw the machine itself?

A. That I made the drawing?

XQ. 117. Yes.

A. The same day.

XQ. 118. And in that drawing, did you embody

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as accurately as you could, all of the observations you made on that day in 1921?

A. Substantially so.

XQ. 119. And that is your memory—well, I will withdraw that. You haven't that drawing?

A. No, sir.

XQ. 120. From your own memoranda, the drawing that you made at that time, your memory of the exact details would be refreshed, would they not?

323 A. They would, yes.

XQ. 121. These exhibits 5 and 6, were first seen by you, when?

A. Those exhibits were first seen by me the same time I made the drawing and after I had been at the Bowman Dairy Company.

XQ. 122. Was the drawing which you made of the machine in the Bowman Dairy, substantially like Figure 545?

A. No, sir.

324 XQ. 123. Was there anything in it substantially like Figure 434?

A. There might have been a bar which would indicate a supporting bar for the can or the driving mechanism.

XQ. 124. Can you recall now whether you made notice of what the driving mechanism was?

A. No, I can't.

XQ. 125. Then you would not be able to swear at this time that your description as you remember it, would show anything either substantially like or unlike, or either approach Figure 434 and may-

325

be the can illustrate l there, but nothing more than where the can set?

A. On a bar.

XQ. 126. But you are not sure about that?

A. No, I am not sure about the bar.

XQ. 127. In referring to Exhibit No. 5, Figure 386, did the drawing that you made correspond substantially with that?

A. No, sir.

XQ. 128. It was substantially different?

326

A. Substantially different, yes, correct.

XQ. 129. Would you recognize the drawing that you made at the present time?

A. I believe I would be able to.

XQ. 130. I show you a drawing. Is that exactly like the drawing you made the day you went in the Bowman Dairy and examined the machine?

A. You say exactly?

XQ. 131. Exactly?

A. That is similar to the one I made.

XQ. 132. Is it exactly or not, or can't you tell?

327

A. Yes, it is the exact reproduction of a drawing I made the day I visited the Bowman Dairy.

XQ. 133. Is that as complete as you made it?

A. That I can't recall. It may have extended a little further.

By Mr. Staples: Mark for identification on the back of that if you please, Defendant's Exhibit No. 1 for identification.

XQ. 134. Does that show all that you remember

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of the machine you say you saw in the Bowman Dairy?

A. Well, that doesn't show all that I remember, because the drawing does not illustrate all that I remember.

XQ. 135. Does it show all you remember in reference to a drip pan?

A. Yes, sir.

XQ. 136. Does it show all that you remember in the mechanism connected with the drip pan?

329 A. Yes, sir.

XQ. 137. Does it show what you observed in the machine actually to exist in reference to the guides?

A. Yes, sir.

XQ. 138. Does it show all that you remember as to the method of movement?

A. The drawing does not show any method.

By Mr. Richards: The drawing identified

By Mr. Staples: Wait, I am not through.

330 *By Mr. Richards*: You are through with the drawing. It isn't

By Mr. Staples: I am not through with the drawing. Because you objected and I cross-examined after you got through with these things, please let me complete with the witness. Then you can have him on direct.

By Mr. Richards: Are you through now—are you sure you're through?

By Mr. Staples: Well, I am not through, no.

By Mr. Richards: The drawing identified

by the witness is offered in evidence, and marked Plaintiff's Exhibit No. 8. 331

By Mr. Staples: The defendant objects to the plaintiff's interrupting and violently demanding the right to interrupt at the cross-examination, and objects to his offering any evidence in exhibits out of their order while he is cross-examining the witness, and asks to have the comment of the attorney Richards disregarded. 332

XQ. 139. (Witness is shown drawing) Do you recognize in that drawing the machine you saw in the Bowman Dairy?

A. One end of the machine; more or less a diagrammatical illustration.

By Mr. Staples: Mark Defendant's Exhibit No. 2 for identification.

By Mr. Richards: The drawing identified by the witness is offered in evidence as Plaintiff's Exhibit No. 8-a. 333

By Mr. Staples: The same objection.

XQ. 140. I show you a cut, Mr. Threedy. Assuming that this section A-B is a washing device—can washing device, and that this C is a drip pan, and that D is a drain; that the cans illustrated are in the forepart of the washing machine. In your opinion is that substantially what you saw there except that the drip pan slants in a different direction?

334 Clarence Edward Threedy

A. Yes, sir.

By Mr. Richards: Objection is taken to the examination of the witness as to his opinions, and further objection is made to the question and answer as to this exhibit, as not being proper cross-examination, and motion is hereby made to strike both the question and answer from the record.

By Mr. Richards: Counsel for defendant is formally requested on the record to permit
335 the Notary to mark the two exhibits which were identified by this witness and offered in evidence by the plaintiff, with the Notary indicated, in this record.

By Mr. Staples: Defendant says that he will welcome at the proper time and place the admission of all exhibits presented by the plaintiff.

By Mr. Richards: Counsel for plaintiff wishes this record to show that counsel for
336 defendant has taken physical possession of the exhibits in question, and refuses to permit Notary to mark them as requested.

XQ. 141. Witness, I am showing you a drawing. Do you recognize what that describes roughly?

A. Yes, sir.

XQ. 142. Substantially does it in any respect represent what you saw at the Bowman Dairy?

A. Substantially with reference to the drain pan it does.

XQ. 143. Does it?

A. Yes, sir.

By Mr. Staples: That is plaintiff's 337

By Mr. Richards: Not the plaintiff's if you please.

By Mr. Staples: Defendant's Exhibit No. 4 for identification, and defendant states that he will have this exhibit and all others which have been referred to this witness in court, for the purpose of such action of consent or objection as plaintiff wishes to make thereon.

XQ. 144. Do you recognize that?

A. Yes, sir. 338

XQ. 145. What is it?

A. That is a can washing machine having a drip pan attached thereto at one end, apparently for catching the milk drippings from the can in an inverted position, as it passes through the machine.

XQ. 146. Now, Mr. Witness, look carefully. Does that not illustrate and show just exactly what you saw at the Bowman Dairy?

A. Substantially what I saw out there.

XQ. 147. And does it not represent everything? 339

A. In substance, yes.

XQ. 148. And I show you another cut. Does not that cut show everything just exactly as it was and as you observed it?

A. In substance, it does, yes.

By Mr. Staples: Plaintiff's Exhibit for identification

By Mr. Richards: Not plaintiff's

By Mr. Staples: I beg your parden Defendant's Exhibit No. 5.

XQ. 149. Now, Mr. Witness, you have noticed in each of these exhibits that I have been showing you, 1 to 5, differences, have you not?

A. Yes, sir.

XQ. 150. There hasn't been a description in any of them of the can washing mechanism and the means of conveying the cans through the machine?

341 A. Just a slight illustration of a pawl and a dog in one of them.

XQ. 151. But there hasn't been a representation in any of the pictures you have yet seen in this entire testimony of any continuous endless chain carrier, has there?

A. No.

XQ. 152. And the substance of each drip pan or can or milk saver has been, hasn't it, a can device in front of the milk washing machine, so positioned as to get the drippings that come down

342 by gravity into some receptacle below the cans?

A. You say in front of it? The can in front of the drip pan is that what you say?

XQ. 153. That is substantially correct, is it not?

A. Substantially correct, yes

XQ. 154. Now you were asked about the quantity of milk saved. You haven't any accurate knowledge of it beyond, as you say, a fairly good-sized stream?

A. Yes.

XQ. 155. You didn't make measurements?

A. Not personally.

XQ. 156. All there is to that, is that milk that drained out of the cans as far as you could see, by gravity, went down through the drain pan and into the pot below. It that correct?

A. Yes, sir.

XQ. 157. That is all there was to it?

A. Yes, sir.

XQ. 158. You have seen drains of various kinds before in connection with other machines?

A. Probably have. 344

XQ. 159. Nothing strange or peculiar about the drain you saw there?

By Mr. Richards: This line of cross-examination is objected to as improper cross-examination.

XQ. 160. Was there anything new or peculiar that you saw in that machine?

A. No, sir.

XQ. 161. Just as common observation, were you brought up on a farm? 345

A. No, sir.

XQ 162 Did you have anything to do with a farm?

A. Not in a general way.

XQ 163. Did you ever see anyone wash any milk cans?

A. Yes.

XQ. 164. Did you ever see anyone wash milk cans that didn't turn them bottom side up?

A. Maybe or maybe not.

346 Clarence Edward Threedy

XQ. 165. Is there any way of draining a milk can except by turning it upside down?

A. No, sir.

Re-Direct Examination by Mr. Richards.

RDQ 1. You spoke in your cross-examination of having made a drawing of this machine which you saw in the plant of the Bowman Dairy Company on the occasion indicated. Please state if
347 you know, what has become of that drawing.

A. I don't know.

RDQ. 2. Have you any idea?

A. No, sir, I haven't.

RDQ. 3. Have you heard it discussed recently?

A. Yes, sir, I have.

RDQ. 4. In what connection?

By Mr. Staples: That is incompetent and immaterial.

A. That the drawing has been lost.

RDQ. 5. I hand you the five exhibits that you
348 identified before Mr. Staples and ask you to state which, if any of them, correctly represent that drawing that you made on that occasion.

A. There are two of them here that represent the drawing that I made—those two there.

By Mr. Richards: The witness picked out Defendant's Exhibit No. 1, Defendant's Exhibit No. 2, and Defendants Exhibit No. 5.

By Mr. Staples: You mean Defendant's Exhibits for identification?

By Mr. Richards: Yes.

RDQ. 6. And as I understand you then, Defen-

dant's Exhibits 1 and 2 substantially correctly illustrate the machine which you saw in operation in the plant of the Bowman Dairy Company, Chicago, Illinois, in April, 1921. Is that correct? 349

By Mr. Staples: Now wait a minute! That is objected to on the ground that it is leading, and on the ground that the question cannot be answered because it asks for both whether it is substantially the same or exactly the same, and there is a difference, which is the difference in this law suit perhaps. 350

By Mr. Richards: The question is of course leading, and purposely so, but it is thought legitimately so under the circumstances presented here.

A. Yes, sir.

RDQ. 7. Referring now to Plaintiff's Exhibit No. 5, please refer to the machine illustrated on the side thereof, marked Form 179, and state wherein that cut differs from the machine which you thus saw in operation in the Bowman Dairy plant. 351

A. Well, this machine illustrated in this cut apparently has means for moving cans through what appears to be a housing, and this illustration here differs from the machine that I saw at the Bowman Dairy Company's plant at Chicago, by not having incorporated as a part thereof, the means for catching and carrying away the milk drippings from the can in inverted position.

RDQ. 8. As I understand you, otherwise this machine is substantially the same as you saw on that occasion?

352 Clarence Edward Threedy

A. I would say so, yes.

RDQ. 9. Now answer the same question with reference to the machine illustrated on the other side of said exhibit, in the cut marked Form 180.

A. The machine illustrated in this cut also has mechanism for intermittently moving cans through the machine. This machine is provided with a drip or drainage pan which serves to catch the milk drippings from the cans in inverted positions, and is substantially similar to that one that I ob-
353 served at the Bowman Dairy's plant at Chicago.

RDQ. 10. Then I take it that this cut correctly illustrates the machine that you saw on that occasion?

By Mr. Staples: That is objected to as leading. He said substantially and the witness has already answered.

By Mr. Potts: Substantially is correct.

By Mr. Staples: Mr. Potts has added from the side lines further testimony.

A. It is substantially correct.

354 RDQ. 11. I also note the same distinction in Plaintiff's Exhibit No. 6, namely that the cut in the illustration marked Form No 233 does not disclose a drip saver and the illustration in the cut marked Form 234 does disclose a drip saver. Do you draw the same distinction here?

A. Yes, sir.

By Mr. Richards: That is all.

Re-Cross Examination By Mr. Staples:

RXQ. 1. Now, Mr. Witness. in making your an-

swers in reference to your exhibits—these exhibits that have been referred to you—whether they are substantially correct or not substantially correct depends whether you see in the picture or in the cut, a milk saving device—that is the substance of it, isn't it? 355

A. No, sir.

RXQ. 2. What other substance is there in connection with the milk washing machine?

A. If it is a substantial resemblance of the machine that I have observed at the Bowman Dairy's plant. 356

RXQ. 3. In what particulars?

A. In the particular with the arrangement of cans which appear to be intermittently moved through the can washing machine over a drip or drainage pan at one end of the machine.

RXQ. 4. Did your answers depend upon the nature of the mechanism—whether it was a continuous chain or not?

A. No, they did not. 357

RXQ. 5. They didn't have anything to do with the mechanism?

A. None.

RXQ. 6. Did they have anything to do with the cans being inverted?

A. Yes.

RXQ. 7. Then you came to your answer by seeing cans inverted, and if there wasn't the milk saving device as in Figure 386, then you said that wasn't substantially, but there isn't any milk saving device in 386, and therefore you say it.

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A. Yes.

RXQ. 8. In Figure 386, were there other facts in that figure that led you to the conclusion that it was substantially different?

A. What is the question?

RXQ. 9. The question is, is 386 substantially like or substantially different?

A. It is substantially different.

RXQ. 10. Now you come to that conclusion that it is substantially different, because there was
359 lacking what?

A. A milk drain or pan.

RXQ. 11. And that is the whole thing on that figure?

A. In one respect.

RXQ. 12. Now on Figure 385, I think you said that was substantially like?

A. Yes.

RXQ. 13. The reason you gave that testimony was that in this picture you detect a drip pan, was is not?

360 A. That is one of the points.

RXQ. 14. The essential one?

A. The inverted position of the cans and the appearance that cans are intermittently moved through the can washing machine.

RXQ. 15. Move continuous?

A. They might be manually moved.

RXQ. 16. Even if you had seen that they were being moved by hand, you would have answered similarly as you did, that they were substantially the same as at the Bowman Dairy, because they

had the milk saving device in connection with the washing machine? 361

A. That is one of the points.

RXQ. 17. Was there any further?

A. The inverted position of the cans, the presence of a milk saving device, and means for supporting it.

RXQ. 18. You mean those legs down there?

A. Yes.

RXQ. 19. Was that as you saw it—that Figure 385? 362

A. Substantially.

RXQ. 20. You also have testified, have you not, in Defendant's Exhibit No. 5 for identification, that that was a substantial resemblance?

A. Yes, sir.

RXQ. 21. Well now, you see at once, do you not, that in Defendant's Exhibit No. 5 there are striking differences between that and plaintiff's Exhibit No. 5?

A. Slight variations. 363

RXQ. 22. Now in Plaintiff's Exhibit No. 5 you see the drawing that you made yourself, do you not?

A. Yes, sir.

RXQ. 23. And that was what you made that day?

A. Substantially that.

RXQ. 24. Did you make more than one drawing?

A. No.

RXQ. 25. Do you see any variations in that exhibit—Defendant's Exhibit No. 5, from the

364 Clarence Edward Threedy

drawing you made the day you looked at the machine?

A. Not that I can recall at this time. There might be some slight unnoticeable variations.

RXQ. 26. You made no actual measurements?

A. No actual measurements.

RXQ. 27. Did you see something like A at the top of that exhibit?

A. You mean that figure there?

RXQ. 28. Yes.

365 A. Yes, sir, I did.

RXQ. 29. You saw that from the floor as you were looking at this machine?

A. From the floor, yes, sir.

RXQ. 30. Is that just the way it looked to you?

A. Substantially the same.

RXQ. 31. Or is that a deduction?

A. No, substantially as I observed it out there.

RXQ. 32. What is the oblong object in the drawing marked A?

366 A. That is a top plan view of the drain pan or drip pan.

RXQ. 33. Did you look down on that pan and see it that way? Did you or did you not?

A. If you put it downwardly, yes.

RXQ. 34. Was it outside or inside of the machine?

A. It was inside.

RXQ. 35. Were the cans upon the machine?

A. They were going through and upon.

RXQ. 36. Didn't the cans obstruct your view of the pan?

367

A. No, sir, they did not.

RXQ. 37. Is that your memory view of what you actually saw there?

A. That is what I saw there.

RXQ. 38. That is your memory then. What is this B on Defendant's Exhibit B?

A. A cross-sectional view of the drip pan.

RXQ. 39. Could you see a cross-sectional view?

A. No.

RXQ. 40. Then you did not see B?

368

A. I don't believe anybody did.

RXQ. 41. That is a deduction of your mind in Mr. Potts' office?

A. Not a deduction. It is necessarily the results of the construction of the pan when one takes a sectional view of the same.

RXQ. 42. Did you see anything in the Bowman Dairy that looks like the drawing you made, B? Yes or no?

A. No, not in section.

RXQ. 43. What is this C?

369

A. That would indicate apparently, a side wall of a housing through which the cans passed.

RXQ. 44. Did you see any side wall of a housing that looked anything at all like C, your drawing?

A. Yes, my drawing.

RXQ. 45. That is a true and accurate representation of the housing you saw there?

A. Well, wouldn't say accurate. It is substantially the same.

RXQ. 46. You mean substantially in dimensions?

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A. It is substantially, but not accurately. There might be a slight difference in dimension or contour.

RXQ. 47. But with such a slight variation of inches or dimensions. You are testifying now that that portion between X and Y, in which the letter C is, is a fair view of what you saw at the Bowman Dairy. Is it?

A. It is a fair substantial view of what I saw at the Bowman Dairy; nothing else.

371 RXQ. 48. That housing, according to this map, was taller than it was long?

A. Necessarily would be.

RXQ. 49. Was it in fact, taller than it was long?

A. Yes.

RXQ. 50. You see in Plaintiff's Exhibit No. 6, a housing. You said that that was subsantially correct. Is the housing there taller than it was long?

By Mr. Richards: Hold on! Let the witness answer, I insist. He has a right to

372 answer.

A. I would say that in answering the various questions here, I became confused and answered one wrong. I would like to correct myself in that respect.

By Mr. Potts: The witness has a right to talk without interruption of defendant's counsel. Plaintiff's counsel has repeatedly objected to Defendant's counsel trying to interrupt a question put to the witness before he has finished, or had an opportunity to answer.

By Mr. Staples: Any more objections?

373

RXQ. 51. Now which question were you confused on?

A. The question relating to the housing being taller or higher than or longer in length.

RXQ. 52. Now you did not mean to say that?

A. No, I don't.

RXQ. 53. What do you want to say?

A. I want to say that the housing is longer than it is taller.

RXQ. 54. Right! I thought so. But I ask you, doesn't this Defendant's Exhibit No. 5 which you drew, show in C marked by X and Y, a housing taller than it is long?

374

A. Well that all depends upon how you are considering the observing view. If you are looking at this part, of course that is taller than it is long.

RXQ. 55. You didn't see anything at the Bowman Dairy did you, in the way of a housing which either substantially accurately or correctly is drawn on the exhibit, Defendant's Exhibit No. 5? You didn't see anything out there that looked like a housing?

375

A. That is a fragmentary.

RXQ. 56. You didn't?

By Mr. Potts: Let the witness answer the question. I insist the witness be permitted to go on with his answer. He started to say that was a fragmentary view.

By Mr. Staples: This examination is being taken in Mr. Potts' office and we have to put up with things that the court would not tolerate of course.

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By Mr. Potts: I am quite sure.

RXQ. 57. Is there anything you want to say further?

A. I haven't been given a fair chance to answer that.

By Mr. Potts: Let him have the exhibit.

RXQ. 58. I have asked you this, and I will make it just as simple language as possible. This is the question: As a matter of fact, did you at Bowman's Dairy, see any housing which is accurately
377 shown or substantially shown or truthfully shown in your drawing, on which I have put the letter C?

A. I have substantially observed a housing substantially as shown in that drawing.

By Mr. Potts: Let him go ahead and explain the fragmentary.

By Mr. Staples: No.

By Mr. Potts: You interrupted him and when he started to again answer the question you again interrupted him by asking six or
378 seven questions in one.

RXQ. 59. Mr. Witness, have I asked you any questions in your last answer whatever?

A. I don't like to answer yes or no.

RXQ. 60. You haven't heard me, have you, such as Mr. Potts called attention to? Yes or No?

A. Yes.

RXQ. 61. Have you suggested that you wanted to make a further answer out loud here?

A. Yes.

RXQ. 62. Now I ask you to state further.

By Mr. Potts: Let the witness have the ex-

hibits' Counsel is holding the exhibits and not permitting the witness to look at them.

By Mr. Staples: Counsel gladly gives the exhibits.

A. I wanted to say that if the counsel asking the question is considering this illustration in the drawing, particularly this figure, he has marked C, a fragmentary view as you see it there, of course there is no housing, where there is a portion broken off at an irregular line as the one I 380
am running my finger along, but if he is considering the housing as a continuation, then this illustration is substantially as that I saw at the Bowman Dairy plant at Chicago.

RXQ. 63. Now as a matter of fact, you did not see anything like that which is marked C, out there?

A. I did under the conditions you consider this a fragmentary view of the machine.

RXQ. 64. That is not a complete view?

A. No. It is a fragmentary view and there was 381
no fragmentary view out there.

RXQ. 65. And to the extent that it was accurate?

A. This does not show the accurate view.

RXQ. 66. Yes or No?

By Mr. Potts: Let the witness answer the question.

By Mr. Staples: I have a right to ask that he answer the question yes or no, and we are going to have the right even in your office of getting an answer yes or no.

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By Mr. Potts: It is ridiculous for you to interrupt the witness particularly before he has an opportunity to say.

RXQ. 67. See if we can get it in just one more attempt. Does that section marked C between X and Y, represent a complete picture of what you saw at the Bowman Dairy?

A. Not a complete picture.

RXQ. 68. Does that particular section even indi-
383 cate anything more than a fragmentary description?

A. No, sir.

RXQ. 69. Now that is what I thought. I will get to another section. You notice an oblong line right under the figure D that I have drawn. What is that?

A. That would indicate a horizontal line of the horizontal rail in a plane; approximately the plane of the top, in fact bottom of the cans in inverted position.

384 RXQ. 70. Did you or did you not in the Bowman Dairy, see such a thing as you have just described as below D in Plaintiff's Exhibit 5?

A. Substantially the same.

RXQ. 71. You did see it?

A. Substantially the same.

RXQ. 72. I call witness' attention to Plaintiff's Exhibit No. 5, Figure 385, you said this is substantially like or different?

A. Substantially like.

RXQ. 73. Does Figure 385 of Plaintiff's Exhibit No. 5 contain such a feature as you have described?

A. It does not.

RXQ. 74. In that particular Plaintiffs Exhibit No. 5 which you say is substantially like what you saw at the Bowman Dairy, is there the feature which we have marked D in Defendant's Exhibit 5? 385

A. No.

RXQ. 75. Then my question is, in that particular Figure 385, it is different from Defendant's Exhibit No. 5, is it not?

A. Yes, sir. 386

RXQ. 76. Now was there the feature D in the Bowman Dairy machine?

A. Yes, sir.

Re-Re-Direct Examination by Mr. Richards:

RDQ. 1. As I understand your testimony, this drawing marked Defendant's Exhibit No. 5, simply shows in the main view, a side view of the feed in end only of the machine, the rest of the machine being broken off on the jagged line at the right. 387 Is that correct?

A. Yes, sir.

Re-Re-Cross Examination by Mr. Staples:

RXQ. 1. That is all it shows, is it not?

A. Yes.

STIPULATION

By Mr. Potts: By stipulation of counsel, signatures to the depositions of all witnesses of both parties, are hereby waived.

388 Charles McEwan

ADJOURNED until 1:30 P. M.

1:30 P. M.

MET PURSUANT TO ADJUOURNMENT
PRESENT AS BEFORE

By Mr. Richards: Notice is hereby served on counsel for defendant that on Thursday, January 28th, 1926, at 10:00 o'clock A. M., the plaintiff will proceed to take the testimony of George E. McFadyen of Chicago, Illinois,
389 as a witness in his behalf.

CHARLES McEWAN

Charles McEwan, being produced as a witness in behalf of plaintiff, after being first duly sworn in response to interrogatories of counsel, testified as follows:

Direct-Examination by Mr. Richards:

390 Q. 1. Please state your name, residence and occupation.

A. Charles McEwan; 1003 South Boulevard, Oak Park, Illinois. I am shop foreman for the Lathrop-Paulson Company.

Q. 2. You are of legal age?

A. I think so.

Q. 3. How long have you been connected with the Lathrop-Paulson Company?

A. Seven years.

Q. 4. And how much experience have you had as a mechanic?

391

A. Oh, I have had about fifteen to twenty years, in different kinds.

Q. 5. In the last four or five years, did you ever visit the plant of the Bowman Dairy Company on Wentworth Avenue, Chicago?

A. Yes, sir.

Q. 6. Please state whether or not you saw a can washing machine in operation there.

A. I did.

Q. 7. Can you describe that machine briefly and generally?

392

A. Why it was a big heavy straight-away machine, and the cans were carried through with lugs, and there was a drip saver on one end of it, and I think it was a block of wood, if I am not mistaken, where the cans turned over on to right them up.

Q. 8. And when was it that you saw that machine there?

A. That was the 20th day of April, 1921.

Q. 9. And did you notice a name plate on that machine, and if so, what?

393

A. Yes, sir. It was a Rice & Adams name-plate.

Q. 10. Do you recall where Rice & Adams were located or where the name-plate said they were located?

A. Why it was on the side of the machine. I wouldn't say which side it was on.

Q. 11. Did it give the address of Rice & Adams, and if so, what did it say?

A. I wouldn't say whether it did or not.

Q. 12. You spoke of a drip pan. Will you be a

394 Charles McEwan

little more specific about this and state just what that drip pan did?

A. Just what?

Q. 13. What it did. What function it performed?

A. Well that was a pan I should judge about maybe three and one-half feet long and possibly fourteen or sixteen inches wide and possibly one-half inch deep at one end, and about three inches the other, and it had an opening on the bottom at
395 the deep end for the milk to run out, and there was a can set under this drip pan—a ten-gallon can—which caught the drippings from this pan, and as the can went over this pan on a track we will say, it dripped into this drip pan, whereby they saved the drippings.

Q. 14. And when you saw it in operation on that occasion, were there actual drippings in it, and if so, what?

A. Yes, sir, there was.

Q. 15. What kind of drippings were they?

396 A. Milk.

Q. 16. And where were these drippings going?

A. Going into a 10-gallon milk can.

Q. 17. And where was that milk can located?

A. I said right under the drip saver at the one end.

Q. 18. And briefly and generally, what did the other features of the machine consist of?

A. Well they had, I would say, just what they all have where the operations — I am sure I wouldn't venture to say how it was operated on the inside.

Q. 19. From what you say, I judge there was some kind of enclosure there?

A. Oh, yes.

Q. 20. And how did the cans operate with reference to this enclosure?

A. Well they went through and under the enclosure and out at the other end.

Q. 21. Did you notice any steam around there?

A. Yes there was steam there—quite a lot, coming from within the machine—different parts and openings. 398

Q. 22. From what you say, I judge these cans were being treated in this housing with steam?

A. Yes, sir.

Q. 23. I hand you a leaf from a catalogue, marked Plaintiff's Exhibit No. 5, and ask you to state whether or not the machine illustrated there resembles or differs from the machine you saw in the plant of the Bowman Dairy Company on that occasion.

By Mr. Staples: I understand that the objections made to the previous witness to materiality, relevancy, competency, comparisons and conclusions are repeated for all of the witnesses. 399

By Mr. Richards: You may understand that.

A. Yes, sir. That is very similar, very similar to that machine.

By Mr. Staples: What is that figure?

(Witness referring to Fgure 385)

Q. 24. I direct your attention to the figure on

400 Charles McEwan

the reverse side of the machine, said figure being numbered Figure 386, and ask you to answer the same question in regard to that.

A. Well there is no drip pan on that one I notice as there was on the one I see.

Q. 25. But as I understand you, otherwise they are substantially the same.

A. About the same, I should judge.

Q. 26. I hand you some leaves from a catalogue
401 marked Plaintiff's Exhibit No. 6, and direct your attention particularly to the illustration marked Figure 610 thereon and ask you the same question in regard to the machine there illustrated.

A. That is very much the same thing, with the exception that it has got the radiator and blower on there that is noticeable. Right here in this box, yes, sir.

By Mr. Richards: That is all.

Cross-Examination by Mr. Staples:

402

XQ. 1. Mr. McEwan, you have seen these same pictures before, have you not?

A. I don't know that I have or not, I am sure.

XQ. 2. In making your answers that they were very similar or that they had some differences, you were judging from general appearances of these pictures, and then you were thinking back as to what you saw at the Bowman Dairy, were you not?

A. Well, no, I wasn't taking my judgment from what I see around here.

403

XQ. 3. Did you have in mind, in answering these questions, the machine you saw at the Bowman Dairy?

A. Yes, sir.

XQ. 4. So that you took the general appearance from these pictures and that of the machine back at the Bowman Dairy?

A. Yes, sir.

XQ. 5. The first thing you would look for here was a drip pan, was it not?

404

A. Absolutely.

XQ. 6. You are working for the Lathrop-Paulson Company?

A. Yes, sir.

XQ. 7. You have talked over with the Lathrop-Paulson Company and the chief thing they usually looked for was the drip pan in connection with the washing machine?

A. Yes, sir.

XQ. 8. You didn't pay any particular attention to the mechanism outside?

405

A. Some, I did.

XQ. 9. You took a look and called attention to the blower and radiator, but outside of that you haven't testified to any denite mechanism of the machine, have you?

A. No.

XQ. 10. As a matter of fact, you talked about steam coming out. You didn't see inside of that housing at all?

A. I looked down through from one end.

406

XQ. 11. I notice you said the milk cans were carried along by some lugs.

A. That was the same description. I can't say just what it was.

XQ. 12. Was there any endless chain going all around this machine you saw at the Bowman Dairy?

A. I couldn't say; possibly.

XQ. 13. You don't remember? You couldn't swear positively?

407

A. No.

XQ. 14. But you did see some lugs?

A. Yes.

XQ. 15. As you remember fairly, those lugs had something to do with the cans which moved through the machine?

A. Yes, sir.

XQ. 16. These lugs were fixed stationary on the machines?

A. Well I don't know; I can't say, how they were put on.

408

XQ. 17. Was there—you don't know anything about the mechanism—how the cans were washed after they got in this housing?

A. No, I can't say as to that.

XQ. 18. Were you ever in that Bowman Dairy Company plant other than this April 20, 1921?

A. No, sir.

XQ. 19. Was that the same time that attorney Richards and Threedy were there? Did you go down at the same time?

A. No, I don't think so.

409

XQ. 20. Oh, yes, this is a different date. Anyone offer any objections to your looking at the machine?

A. No, sir, no one offered any objections.

XQ. 21. You didn't have to get any permission from the office?

A. No, sir.

XQ. 22. You were asked to go there by someone?

A. Yes, sir.

410

XQ. 23. Who was that?

A. Mr. Lathrop.

XQ. 24. You were told to look over the machine for the purpose of a law suit to testify?

A. No, sir, for the purpose of the drip saver.

XQ. 25. He told you to look and see if there was a drip saver.

A. He wanted me to see that drip saver that was on the Rice & Adams machine.

XQ. 26. And you went down there to observe it?

A. Yes, sir.

411

XQ. 27. You expected—you knew that there was some trouble or law suit?

A. Well I didn't know there was a law suit, but expected there would be.

XQ. 28. You made your observation expecting to be a witness?

A. Yes, I think I did, sure.

XQ. 29. How long have you been in the milk business—that is, manufacturing milk machines?

A. Seven years.

XQ. 30. The name-plate was about what size?

412 A. Why, I don't know. It was about probably four by six, or maybe five by seven—something similar to that.

XQ. 31. Little iron plate that was attached to a leg?

A. I think it was a brass plate connected to the side of the machine.

By Mr. Staples: I don't think there are any more questions.

413 RICHARD GUENTHER

Richard Guenther, being produced as a witness in behalf of plaintiff, after being first duly sworn, in response to interrogatories of counsel, testified as follows:

Direct-Examination by Mr. Richards:

Q. 1. Please state your name, residence and occupation.

414 A. Richard Guenther; 5635 South Seeley Avenue; sheet metal worker.

Q. 2. For whom do you work?

A. Lathrop-Paulson Company.

Q. 3. You live in Chicago, do you?

A. Yes, sir.

Q. 4. You are of legal age?

A. Yes, sir.

Q. 5. How long have you worked for the Lathrop-Paulson Company?

A. About five and one-half years.

Q. 6. In recent years did you visit the Bowman

Dairy plant on Wentworth Avenue, Chicago?

A. Yes, sir.

Q. 7. Did you see a can washing machine in operation there?

A. Yes, sir.

Q. 8. What time was it that you paid this visit to that plant?

A. That was April 28, 1921.

Q. 9. Please describe briefly and generally the can washing machine that you saw in operation there on that date.

A. Why I saw a can washer there with a drip saving device. That was the main thing I looked at.

Q. 10. And what kind of drippings were there? What was it that dripped?

A. Milk.

Q. 11. Just give an idea of what kind of a device it was that was catching these milk drippings.

A. At the end of the machine there was a pan of about, oh I should judge, three and one-half feet long, and it was about three inches deep (I hadn't a rule with me) and about one-half inch deep at the top end, and it was about thirteen inches or something like that in width, and it had a spout on the deep end about an inch in diameter. That was where the milk went out into a 10-gallon milk can underneath, and at the time I was there, the can was pretty near half full with milk.

Q. 12. And what was the rest of the machine as nearly as you can state, outside of this?

A. What do you mean, in size?

418 Richard Guenther

Q. 13. Well, the drip saver wasn't all the machine was it? There was some more to it.

A. Well, it was a can washing machine and the cans went over this drip saver and covers alongside of the cans, and they saw that the machine washed the cans and came out clean at the other end of the machine.

Q. 14. About how long was this machine, would you say?

419 A. I didn't take particular notice. I couldn't exactly tell you how long it was—20 feet—I couldn't say exactly how long it was.

Q. 15. But it was much longer than the drip saving pan?

A. Oh, yes, much longer.

Q. 16. And did you notice any steam around there?

A. Yes, I noticed steam on the inside of the machine.

Q. 17. When you speak of the inside of the
420 machine, was that sort of a housing that the cans went through?

A. Yes, sir.

Q. 18. And the steam was inside?

A. Yes, inside.

Q. 19. Now was there anything on that machine to indicate to you who made it, that you noticed?

A. Yes, sir. I noticed a name-plate on the inside of the machine that said Rice & Adams.

Q. 20. And do you remember whether that name-plate gave the address of Rice & Adams?

A. No, sir, I don't remember. I think it did,

but I don't remember where it was or anything like it, but I took particular notice of the name-plate, and it said Rice & Adams.

Q. 21. Did you hear any conversation as to the amount of milk that was saved by this drip saver?

By Mr. Staples: The objections repeated.

A. Yes.

Q. 22. And what was said?

A. I was introduced to a gentleman by the name of Mr. Gaffney, supposed to be the superintendent of the plant, and I heard him tell Mr. Lathrop that 422 he saved about fifty pounds of milk a run.

Q. 23. And what do you understand a run to mean?

A. Well that means the milk that they dumped that day—fifty pounds a day.

Q. 24. Now I hand you a leaf from a catalogue marked Plaintiff's Exhibit No. 5, and direct your attention particularly to the cut thereon marked Figure 385, and ask you to state if you know, how that machine that you saw on that occasion, com- 423 pares with or differs from the cut.

A. The front part of this machine looks something like the one I saw at that time, only that the machine that I saw at that time, had pumps and stuff on this right side of the machine. The front looks something like the one I saw.

Q. 25. When you say "front" you point to the feed end of the machine?

A. Yes, sir.

Q. 26. And is that where the drip saver is?

A. Yes, sir.

424 Richard Guenther

Q. 27. How about in regard to the drip saver, does that cut show the machine substantially as it was that day?

A. The drip saver looks something like the one I saw that day.

Q. 28. I also direct your attention to Plaintiff's Exhibit No. 6, and particularly to the cut marked "Figure 610," and ask you the same question as to that.

425 A. Well this here front part is about the same shape as the one I saw, but whether the rest looks something like it, I don't know.

By Mr. Richards: That is all.

Cross-Examination by Mr. Staples:

XQ. 1. Mr. Guenther, you were working for Lathrop-Paulson when you went down there?

A. Yes.

XQ. 2. And you went with Mr. McEwan who was here with you today?

426 A. Yes, sir.

XQ. 3. You were sent down there by Mr. Lathrop to see that machine?

A. Yes, sir.

XQ. 4. That was the only time you saw that machine?

A. Yes, sir.

XQ. 5. And you have described just as accurately as you can, everything you saw on that machine, have you not?

A. Yes, sir.

XQ. 6. You expected you would be a witness?

427

A. Yes, sir.

XQ. 7. You said you were a sheet metal worker, did you not?

A. Yes, sir.

XQ. 8. And you always carry your measure—your rule—with you, do you not?

A. No, I don't always carry it.

XQ. 9. But you had it with you the day you went down to view that machine, didn't you?

A. No, I didn't.

428

XQ. 10. I thought you said you did?

A. No, sir.

XQ. 11. You didn't make any measurements?

A. No, sir.

XQ. 12. And you don't want the court to understand that you have any definite measurements you could testify to, do you?

A. No, sir.

XQ. 13. The real thing you were looking at was a milk saver, wasn't it?

A. Yes, sir

429

XQ. 14. And when you give answers here to a lawyer that the picture was something about what you saw, or about the same, your answer meant that the something reminded you of a can or milk saving device?

A. The shape of it.

XQ. 15. The shape of it?

A. Yes, sir.

By Mr. Staples: That is all

430 Walter H. Paulson

WALTER H. PAULSON

Walter H. Paulson, being produced as a witness in behalf of plaintiff, after being first duly sworn in response to interrogatories of counsel, testified as follows:

Direct-Examination by Mr. Richards:

Q. 1. Please state your name, address and
431 occupation.

A. Walter H. Paulson; 6030 Campbell Avenue, Chicago, Illinois; occupation, Vice-President of the Lathrop-Paulson Company.

Q. 2. How long have you been connected with the Lathrop-Paulson Company?

A. Ten and one-half years.

Q. 3. You are the Mr. Paulson whose name appears as part of the name of that company, are you not?

A. Yes, sir.

432 Q. 4. And how long have you been engaged in the manufacture of milk can washing machines?

A. Ten and one-half years.

Q. 5. What was your occupation before that?

A. Working in a milk dairy. I was a mechanic for the Borden Condensed Milk Company.

Q. 6. In what different capacities did you work for that company?

A. Wagon washer,

By Mr. Staples: I suggest that this is immaterial.

Witness continuing: Carpenter, tin-smith,

433

horse doctor, barn boss and mechanic.

Q. 7. You are, I believe, also the same Walter H. Paulson who jointly with Mr. Lathrop invented some of the features of the machine which you are manufacturing. Is that correct?

A. Yes, sir.

Q. 8. And some of the features of the machine you invented alone, I believe. Is that correct?

A. Yes, sir.

Q. 9. Now what is the output of the Lathrop-Paulson Company?

434

A. Milk can washers.

Q. 10. And is that all? Is that all they manufacture?

A. Milk bottle washers.

Q. 11. Milk can and milk bottle washers?

A. Yes, sir.

Q. 12. What is the principal business of the Lathrop-Paulson Company?

A. Building milk can washers.

435

Q. 13. And will you briefly describe the character of the milk can washing machine that that company produces?

By Mr. Staples: That is objected to in addition to the objections which you have consented to, on the ground that it is incompetent and immaterial upon this suit upon the Blair patent, to the extent that it describes the same machine that is covered by the Blair patent, the best exidence being the patent and specification itself, and to the extent that it tends

436 Walter H. Paulson

to vary from the Blair patent in the suit, it is inadmissable.

A. It is a straight-away milk can washer with a drip saving device at the front end of the machine, and the machine embodies the drip saving device which is Operation No. 1; cold water rinse, which is Operation No. 2; Soda washing solution, which is Operation No. 3; Hot water rinse, which is Operation No. 4; steam jet, which is Operation No. 5; Hot air, which is Operations No. 6 and 7;
437 inverting can to upright position, which is Operation No. 8; placing cover on can, which is Operation No. 9.

Q. 14. And where is this drip saver located with reference to the rest of the machine?

A. Located at the entrance of the machine, outside of the hood, so that the milk saved would be uncontaminated by the washing solution.

Q. 15. Now the machine that the Lathrop-Paulson Company has been manufacturing through
438 these years, as you have stated, has it always been the same?

A. Certain features, yes.

Q. 16. Well what features have always been the same?

A. The drip saver and the method of advancing the can.

Q. 17. But as I understand the import of your answer, there have been certain minor changes in the other parts of the machine?

A. Yes, sir.

Q. 18. Now in the last four to five years, did

439

you pay a visit to the plant of the Bowman Dairy Company in Chicago?

A. Yes, sir.

Q. 19. When was that, as near as you can state?

A. April 28, 1921.

Q. 20. And did you see a can washing machine in operation there?

A I did.

Q. 21. Please describe briefly the can washing machine.

440

A. Straight-away can washer with a drip saving device at the front end of the machine, placed there for the purpose of saving the milk drippings from the cans which had been dumped and placed on the machine. This drip saver was placed on the outside of the hood so that the milk would not be contaminated by the washing fluid. The cans were advanced by reciprocating movement through the machine. As to the amount of washing jets, rinsing jets and sterilizing jets of the machine, I could not state. The cans were advanced through the machine and were turned over at the other end.

441

Q. 22. Did you see any steam around there?

A. There never was a can washer operated that there wasn't steam around.

Q. 23. Then I gather from that there was steam around this one?

A. Yes, sir.

Q. 24. Where did it appear to be coming from?

A. From the inside of the machine—the washing fluid, the sterilizing jet, hot water rinse.

442 Walter H. Paulson

Q. 25. From your experience in washing machines of this character, what is the prime essential of such machines?

A. To wash the cans, sterilize them, dry them so they are sent back to the farmer in a sterilized condition.

Q. 26. And as I understand you, this washing involves necessarily the removal of all milk or cream residue from the cans. Is that right?

A. Yes, sir.

443 Q. 27. Now was there anything on this machine that you saw on that occasion, to indicate who had made it?

A. The name-plate.

Q. 28. And what was on that name-plate?

A. Rice & Adams Corporation, Buffalo, New York.

Q. 29. Did you have any conversation on that occasion as to the amount of milk that could be or was being saved by the use of this machine?

444 A. We went into the plant and called for the superintendent who was pointed out to us, a gentleman by the name of Gaffney, and we were taken out into the can washing room and the question of what the amount of milk saved throughout the day was, was brought up, and Mr. Gaffney made the statement that they saved about fifty pounds of milk a day.

By Mr. Staples: We understand that all past objections are raised as if we repeated them.

Q. 30. I hand you a leaf from a catalogue mark-

ed Plaintiff's Exhibit No. 5, and direct your attention particularly to the cut thereon marked Figure 385, and ask you to state if you can, how the machine there illustrated, resembles or differs from the machine that you saw in the Bowman plant on that occasion. 445

A. It resembles it to a great extent in construction—the different workings there.

By Mr. Staples: You said there was some different working?

Witness: In the different workings, as far as my memory carries me back, as good as I remember, you called it a right or left hand machine. The machine that I viewed at the Bowman Dairy plant had a drip saver at the receiving end of the machine outside of the hood where the milk would be saved uncontaminated by the washing fluid, after the cans had been dumped in the dump tank, placed on the machine, inverted, bottom-side up in a position to let the milk that had adhered to the side of the can, drip out as it passed over the drip saver. The operations in the inside of the machine I will not state, because I am not positive. As I stated before, the cans are advanced through the machine by reciprocating movement, which is operated with what they term an open gear. 446 447

Q. 31. And what relation would the reciprocating movement that you saw there on that occasion, have to an endless belt or chain conveyor for the same purpose, in your judgment?

By Mr. Staples: Just a minute! A further objection is added to this question that this

448 Walter H. Paulson

calls for an expert, and this witness does not appear to be qualified as an expert.

A. There would be no difference in the results that were obtained.

Q. 32. I gather from that that in your judgment one would be the equivalent of the other?

By Mr. Staples: That is objected to as positively leading, even to the use of the technical term of "equivalent", and I wish it to appear in the record as a special objection, counsel for plaintiff expecting from that answer "Yes, it is equivalent."

449

By Mr. Mitchell: Also the conclusion of the witness.

A. Yes, sir.

Q. 33. What connection, if any, have you had with the actual building of the Lathrop-Paulson machines?

A. Devising them.

Q. 34. Who superintended the building of these machines generally?

450

A. Myself.

Q 35. Have you ever seen a Lathrop-Paulson can washing machine in operation in a milk plant?

A. Yes, sir.

Q. 36. Did you ever see such a machine in operation at Delavan, Wisconsin?

A. Yes, sir.

Q. 37. In what plant and when was that?

A. In the plant of the John Wildi Company.

Q. 38. When was that?

A. In the fall of 1917.

451 Q. 39. What did you observe on that occasion?

A. Why I went up there to overcome some slight difficulties that they were having with the machine, and found out it was due to the installation made by the John Wildi mechanic. I made the alterations on the machine and had some time to wait before taking my train to leave, and stayed to watch the machine operated. They received the truck load of milk cans full of milk while I was there. There was fifty-nine cans in all, and the gentleman that was operating the machine started 452 to dump these cans, and he had placed four of them in the machine and when the first can entered onto the washing solution, it looked like good rich cream flowing out onto the floor. I asked him what he was dumping, and he said he was dumping condensed milk and it was condensed at a small plant and shipped in there for canning, and I asked him why he didn't use the thawing device that was placed on the machine that was supposed to work in connection with the drip saver during the cold winter months, and he said he didn't 453 know there was such a thing on the machine. I showed him how to put it in operation, and in washing the balance of the cans they saved fifty-four dollars worth of condensed milk.

Q. 40. How did you determine this $54.00 of condensed milk that was saved in cans?

A. After the last can was dumped, it was brought in. On the load we dumped, the milk we had in cans which was saved into the tank, we weighed. The actual weight I don't remember,

454 Walter H. Paulson

but it figured out, as the condensed milk was selling at thirteen cents a pound at that time.

By Mr. Staples: Is it understood also that the motion I made to strike out all the testimony.

By Mr. Potts: Yes, sir!

Q. 41. Then, as I understand you, sufficient of this milk was thus saved on that occasion, which valued at thirteen cents a pound, would equal a
455 value of $54.00. Is that right?

A. Yes, sir.

Q. 42. Have you seen other machines of the Lathrop-Paulson manufacture in operation?

A. Lots of them.

Q. 43. Where have other such machines come under your observation?

A. At the Borden Condensed Milk plant—it was at that time.

Q. 44. And how long was such a machine or the operation of such machine, under your observa-
456 tion there?

A. About six months.

Q. 45. And what did you observe as to the savings of milk, if any, by that machine?

A. At this plant we saved a 10-gallon can out of every 200 cans—85 pounds of milk for every 200 cans.

Q. 46. And do you recall about the value of that milk at that time.

A. About $2.35 a hundred.

Q. 47. And what about is the value of such milk today?

457

A. I think it is $2.85.

Q. 48. Now an endless chain conveyor for feeding these milk cans through the machine and also a reciprocating movement for the same purpose, have been mentioned here. In your judgment, what if any effect, could either form of feeding mechanism have upon the operation of the milk saver?

By Mr. Staples: Same special objection—not expert testimony.

458

A. None at all.

Q. 49. You spoke about the use of a thawing device on this machine at Delavan, Wisconsin, I believe. Who was the inventor of that thawing device?

A. Why it was figured out by Mr. Lathrop and myself.

Q. 50. Have you ever installed these Lathrop-Paulson machines in any other plants than those already mentioned?

459

A. Wisconsin Condensed Milk Company at Grass Lake, Illinois; Pecatonica, Illinois; Burlington, Wisconsin; Armour & Company of Bloomer, Wisconsin; Little Falls Dairy, Little Falls New York; Salisbury & Peach at Pelaska, New York; Borden Condensed Milk Company at Hebron, Illinois; Valicia Evaporated Milk Company at Middleton, Wisconsin; another one for the same company at Footville, Wisconsin. I might think of others, but I guess that is sufficient.

Q. 51. Please state, if you know, what connection the Blair patent in suit has to the machines

460 Walter H. Paulson

manufactured by the Lathrop-Paulson Company.

A. The principal one is the drip saver.

Q. 52 And what connection has the Blair patent with the drip saver, as you understand it?

A. The drip saver is invented by Mr. Blair, that is placed on the receiving end of the machine outside of the hood for the principal place or purpose of saving the milk uncontaminated by the washing fluid.

Q. 53. Do the Lathrop-Paulson machines bear
461 a name-plate now?

A. Yes, sir.

Q. 54. What has this name-plate on it?

A. The name of the Lathrop-Paulson Company, and all of the patents that belong to the Lathrop-Paulson have been placed on there as they were taken out.

Q. 55. Are you familiar with the Blair patent in suit?

A. Yes, sir.

Q. 56. Does that appear on this name-plate?

462 A. Yes, sir.

Q. 57. I take it then from your testimony, that the Lathrop-Paulson machine is being manufactured under this Blair patent. Is that correct?

A. Under the Blair patent and all of the individual patents that we have.

Q. 58. I direct your attention to a brass plate marked Plaintiff's Exhibit No. 10, and ask you to state, if you know, what that is.

A. It is the brass name-plate of the Lathrop-Paulson Company, with their name and business

463

location and patents owned by that company.

Q. 59. And to your knowledge, what relation to, or connection with the Lathrop-Paulson machines, has that name-plate?

A. It is supposed to be put on there—placed on all of the machines to protect them against infringement.

Q. 60. Then, as I understand you, such a name-plate is placed on all of the machines manufactured by the Lathrop-Paulson Company?

464

A. Yes, sir.

By Mr. Richards: The name plate identified is offered in evidence and marked Plaintiff's Exhibit No. 10.

Q. 61. I hand you a document marked Plaintiff's Exhibit No. 1 and ask you to state if you know, what that is.

A. Catalogue of the Lathrop-Paulson Company.

Q. 62. And what does that catalogue illustrate?

465

A. This book shows pictures and explains the Lathrop-Paulson Standard Automatic Can Washer.

Q. 63. About when, if you know, was that catalogue published? Just as near as you can state?

A. I couldn't state just when.

By Mr. Richards: The catalogue identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 1.

Q. 64. Were you present at the hearing before

466 Walter H. Paulson

Judge Carpenter in the case entitled "Harry D. Lathrop v. Bowman Dairy Company, in Equity No. 2239, in the United States District Court for the Northern District of Illinois, Eastern Division?"

A. Yes, sir.

By Mr. Staples: That is objected to as incompetent, immaterial—have you got the date of that hearing?

467 *By Mr. Richards*: I haven't come to that.

By Mr. Staples: It is objected to as incompetent, immaterial and assuming a fact stated which has not been proven.

Q. 65. Please state, if you know, the machine used by the Bowman Dairy Company, of which complaint was then made by that plaintiff before Judge Carpenter on that occasion.

By Mr. Staples: Objected to for the further reason that it is not the best evidence, the evidence before Judge Carpenter being the

468 best evidence.

A. Yes, sir.

Q. 66. What machine was it?

A. Rice & Adams.

Q. 67. Is there anything here that shows what machine that was?

By Mr. Staples: What do you mean by "here"?

By Mr. Richards: In this room.

Q. 68. I will ask you another question.

By Mr. Staples: I would like the steno-

469

grapher to notice that in answering the last question, the witness remained mute.

Q. 69. Is there anything here that illustrates the machine of which complaint was made to Judge Carpenter on that occasion.

A. Leaves out of catalogues.

Q. 70. Which catalogues?

A. The exhibits. Plaintiff's Exhibit No. 5 somewhat resembles the machine that was in complaint. Plaintiff's Exhibit, No. 6, Form 234 also. That is all.

470

Q. 71. Did you testify as a witness in the case against the Bowman Dairy Company which Judge Carpenter decided on that occasion?

A. Yes, sir.

Q. 72. And in that testimony in that case, did you have occasion to describe the machine in use by the Bowman Dairy Company, of which complaint was made?

A. Yes, sir.

By Mr. Staples: All of the objections are called to mind, to this.

471

Q. 73. And what was that machine?

A. Straight-away can washer.

Q. 74. And what relation did the machine which was involved as an infringement in that case, bear to the machine which you have described here this afternoon, as being in the Bowman Company plant on that occasion?

A. The same.

Q. 75. As I understand you then, the machine which Judge Carpenter held to be an infringement

472 on that occasion, is the same machine about which you have been testifying here?

By Mr. Staples: The witness sustains the court in some other case.

By Mr. Potts: It is earlier identified in the exhibit.

By Mr. Richards: That is all.

Cross-Examinaton by Mr. Staples:

473 XQ. 1. Mr. Paulson, were you ever in your life, a witness in the presence of Judge Carpenter, giving testimony on the Blair patent? Yes or no?

A. I would not answer yes or no. I am not positive I was at the court session at the time the case was decided in our favor and as to whether

XQ. 2. I haven't asked that. I have asked whether you were ever a witness in the presence of Judge Carpenter, giving testimony on the Blair patent?

474 A. I wouldn't state for sure whether I gave evidence or not.

XQ. 3. Don't you know whether you have been at witness at any time before Judge Carpenter?

A. I was a witness but I'm not positive whether I gave evidence or not.

XQ. 4. In what court building was this hearing presided over by Judge Carpenter?

A. In the Federal Building.

XQ. 5. You heard witnesses testifying on this Blair patent in the Federal Building before Judge Carpenter?

475

A. No, sir.

XQ. 6. You never heard a witness testify before Judge Carpenter on this Blair patent in any suit, did you? Yes or no?

A. I wouldn't say for sure.

XQ. 7. Well don't you know?

A. You got my answer.

XQ. 8. Did you ever see the exhibits that you have just been giving oath about—Exhibits 5 and 6—handed to Judge Carpenter in any court in your life?

476

A. I wouldn't say whether they were the ones in that case or not.

XQ. 9. Did you ever see any exhibits handed to Judge Carpenter in your life, on the Blair patent?

A. Yes, sir.

XQ. 10. Where were you?

A. In the Federal Building.

XQ. 11. Was I present?

A. I wouldn't say whether you were or not.

XQ. 12. Don't you know whether you ever saw me before today?

477

A. No, sir.

XQ. 13. Did you ever see me examine any witness before today?

A. No, sir.

XQ. 14. Are you sure whether I was in the Federal Court when you say a hearing was heard by Judge Carpenter?

A. No, sir.

XQ. 15. Mr. Paulson, I am trying to get definitely from you, whether there was ever a trial

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that you remember, before Judge Carpenter, on the Blair patent, where witnesses were examined in open court?

By Mr. Richards: You didn't say that.

XQ. 16. Yes or no?

A. I gave you my answer a little while ago.

XQ. 17. Will you say yes or no for me now?

A. No, sir, I won't.

XQ. 18. You won't say definitely that there was testimony taken in open court before Judge Car-

479 penter, will you?

A. In what way do you refer?

XQ. 19. Well, will you say?

A. No, sir. I want that question explained so that I understand it, now, if you call this evidence.

XQ. 20. I am not asking you any question further. You have explained yourself. Do you consider this a hearing at the present time before Judge Carpenter?

A. I don't know if I do.

480

By Mr. Potts: I object to this cross-examination as to what the witness considers.

By Mr. Staples: He has been giving a great line of testimony.

By Mr. Potts: Not on courts or depositions, or whether taken in open court, but he has given testimony as an expert on dairy machinery, particularly can washing machines.

XQ. 21. Do you consider that you are having a hearing before some judge of the Federal Court presiding?

A. Yes, sir.

XQ. 22. And it is that kind of a hearing that you are referring to when you say a hearing was once had by Judge Carpenter? Yes or no?

A. I wouldn't answer yes or no.

XQ. 23. Can you answer either yes or no? Do you know what the truth is on that subject?

By Mr. Potts: I object to that line of cross-examination. There is no court in the land that would permit it.

482

Witness: If I am allowed to say a little something.

By Mr. Staples: I am not asking you a question. Read the question—see if you can answer it. If not, we will go to another question.

By Mr. Richards: Are you through?

By Mr. Staples: No.

By Mr. Richards: Are you through?

By Mr. Staples: No.

By Mr. Richards: Are you through now? 483

By Mr. Staples: Not until I give my question.

By Mr. Richards: Well, you just go ahead and get through, and then I want to say something.

By Mr. Richards: Are you through, Mr. Staples?

By Mr. Staples: Not until the question is read.

(Reporter reads question).

By Mr. Richards: Now are you through?

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By Mr. Richards: The witness is instructed he may take his time and disregard the interruptions and objections and additional questions made by counsel for defendant, and answer the questions fully and completely before he attempts to answer another question or pay any attention to the interruption of counsel.

By Mr. Staples: Mr. Staples says that all he has asked in this question is for the truth,
485 and nobody has objected to the truth on the part of the defendant.

By Mr. Richards: It is understood that the witness is sworn to tell the truth, the whole truth, and nothing but the truth. Sometimes a part truth is a lie. It therefore follows that where the witness is permitted to only partially answer a question, that the purport of the answer may be a lie.

By Mr. Mitchell: So you are giving us an
486 insult?

By Mr. Richards: It is therefore requested that counsel for defendant permit the witness to answer the question before he interrupts.

By Mr. Staples: Mr. Staples asks that the Federal Court read the last question asked, the substance of which was whether Mr. Paulson knew what the truth in reference to having a hearing before Judge Carpenter was, and all comments of plaintiff on the part of learned counsel have followed that simple question, which has not yet been answered.

Read the question, and answer the question as fully as you wish.

By Mr. Potts: The witness is instructed that he has the right to have the previous questions reread.

By Mr. Richards: And furthermore, that he has a right to answer the questions as he sees fit, without interruption from counsel for defendant.

By Mr. Staples: Or plaintiff.

By Mr. Richards: Or plaintiff. 488

By Mr. Staples: Now I don't believe you realize what

By Mr. Richards: He started to answer that question and he would say about three words when you would interrupt him.

By Mr. Staples: Will counsel for plaintiff permit me to have the question asked?

By Mr. Richards: Counsel for plaintiff permits that you ask the witness any question you wish, but wait until he has an opportunity 489
to answer it.

By Mr. Richards: If you think that that hearing was a falsehood, we will go right down before Judge Carpenter and find out whether or not it was a falsehood.

By Mr. Mitchell: We are going before the court in Buffalo.

By Mr. Richards: We can go here, and if you don't know how, I will show you how.

By Mr. Staples: Perhaps the witness will now be able to answer whether he has knowl-

490 edge of such a hearing before Judge Carpenter.

By Mr. Ricards: He has said he was there.

By Mr. Staples: I want the last question. He has already said that he was not there.

By Mr. Richards: Object to that.

Witness: Never said anything of the kind.

By Mr. Potts: Witness said he was there at the hearing and the argument of the case.

491 *By Mr. Staples*: It has been over fifteen minutes since I asked that question and I would like to have my answer.

By Mr. Richards: Please ask the question and then if you kept your mouth shut you could get the answer.

By Mr. Staples: I don't take instruction from a man like you, and I take it as discourtesy when I am in your office, and please don't insult me anymore.

492 *By Mr. Richards*: And I will make the same request to you.

Witness: I would like to answer that question now.

By Mr. Staples: Which question?

Witness: The one in regard to that hearing—whether I gave evidence or not before Judge Carpenter. I am not an attorney or a lawyer of any description, and that point slipped when the question was asked. I certainly gave evidence at the case that was tried before Judge Carpenter.

XQ. 24. Was Judge Carpenter there when you gave your testimony?

A. I don't know whether you would call that he was there. The same evidence was taken the same as it is being taken today.

XQ. 25. There is no judge of the Federal Court in Mr. Potts' office today when we are taking your testimony?

A. No, sir.

XQ. 26. Now Mr. Paulson, you are manufacturing a number of different dairy devices. 494

A. Two.

XQ. 27. Just two devices.

A. Yes, sir.

XQ. 28. What are the two devices?

A. Milk can washer and milk bottle washer.

XQ. 29. That is all, just milk washing machines then, one class?

A Yes, sir.

XQ. 30. Now you place this plate, Exhibit No. 10 on all of your machines, whether they are milk bottle washers or milk can washers, don't you? 495

A. Yes, sir.

XQ. 31. I notice on your exhibit, a list of dates and numbers referring to patents. Do all these patents refer to milk bottle washing machines?

A. No, sir.

XQ. 32. Do all of these patents refer to milk can washing machines?

A. No, sir.

XQ. 33. You have referred throughout to the Lathrop patented machines as the Lathrop-Paul-

496

son machines. On all of these installations of machines, you have certain inventions I understand which you yourself personally, or you yourself and Mr. Lathrop, invented. Is that true?

A. Yes, sir.

XQ. 34. And on the savings of milk—you refer to savings of milk—it was the machines, in which some particulars, the patents were those of the Lathrop-Paulson and yourself, is it not?

497 A. They are all the Lathrop-Paulson—owned by the Lathrop-Paulson Company.

XQ. 35. And what you have been talking about, have been the patents owned by the Lathrop-Paulson Company? ?

A. Yes, sir.

XQ. 36. You have for the last ten and one-half years been associated with the Lathrop-Paulson Company, all the time an officer?

A. All but one year.

XQ. 37. And before that time, did you work for

498 Mr. Lathrop?

A. Yes, sir.

XQ. 38. And for a good many years you have been in some phase of the milk manufacturing business?

A. Yes, sir.

XQ. 39. And you are financially interested in this law suit at the present time?

A. No, sir.

XQ. 40. You are a stock holder of the Lathrop-Paulson Company?

A. No, sir.

XQ. 41. You are merely an employee of the Lathrop-Paulson Company at the present time?

A. Yes, sir.

XQ. 42. I thought you said you were Vice-President at the present time?

A. I am.

XQ. 43. Doesn't the Vice-President

By Mr. Potts: He holds a qualified position.

XQ. 44. So that your connection with the Lathrop-Paulson Company is merely a figure—merely 500
a qualification to hold?

A. Yes, sir.

XQ. 45. What is your actual work with the Lathrop-Paulson Company at the present time?

A. Superintendent of the building of milk can and bottle washing machines.

XQ. 46. Now you went to the Bowman Dairy Company plant in company with Mr. McEwan and Mr. Guenther, did you? I notice it is the same date.

A. Yes, sir. 501

XQ. 47. And you heard their testimony here?

A. Yes, sir.

XQ. 48. You were also asked to go there by Mr. Lathrop, were you not?

A. Yes, sir.

XQ. 49. And you went there expecting that you would be a witness in some kind of a litigation?

A. Yes, sir.

XQ. 50. Now the main thing you had in mind and you observed at the Bowman Dairy, was some kind of a milk saving device connected with some

502 kind of a can washing or bottle washing machine?

A. Not entirely, no.

XQ. 51. Just what were you looking for?

A. Construction of the machine as far as I could see all the way through.

XQ. 52. There was much of the machine you could not see because it was enclosed, was there?

A. Yes, sir.

XQ. 53. The substance of what you have testified to today, is simply what you did see a milk
503 saving device connected with the washing machine?

A. Yes, sir.

XQ. 54. And the only mechanical thing that you have mentioned very much is what you have called the means of advancing the cans, is it not?

A. Yes.

XQ. 55. Now that means that what you found for advancing the cans, without any doubt, was some kind of a reciprocating motion, was it not?

504 A. Yes, sir.

XQ. 56. You said it was an open gear. I don't know just what that means. What is it?

A. Well you have a small gear which handles the connecting rod that moves your mechanism back and forth, and the open gear is a gear which might have one-quarter teeth cut out or all, but enough to move the moving part a fraction of an inch.

XQ. 57. I see now that the open gear was in connection with the lugs that someone spoke of?

A. Yes.

505

XQ. 58. And those lugs, as a matter of fact, are stationary?

A. No, sir. They were stationary in relation to the whole machine, but they did not continue all the way through the machine.

XQ. 59. And there wasn't any endless chain in the machine you saw at the Bowman Dairy?

A. No, sir.

XQ. 60. In all of the Lathrop-Paulson machines under the Blair patent, there has been an endless continuous chain?

506

A. No, sir.

XQ. 61. Not on the Lathrop-Paulson machine?

A. Not the Blair Patent. The Blair patent only covers the drip saver which we have on our machine.

XQ. 62. You merely use the drip saver, do you, of the Blair patent?

A. Yes, sir.

XQ. 63. You don't attempt to use anything else out of the Blair patent on your machine?

507

A. No, sir.

XQ. 64. At any rate, there wasn't any endless carrier on the machine you saw at the Bowman Dairy?

A. No, sir.

XQ. 65. Is the Bowman Dairy still in existence here in Chicago?

A. It was a week ago.

XQ. 66. Well, they are a going concern now in the milk business, aren't they?

A. Yes, sir.

508 Walter H. Paulson

XQ. 67. When you went up there way back in 1921, you knew Mr. Gaffney before you got there, didn't you?

A. No, sir.

XQ. 68. Did you know anyone in the plant?

A. No, sir.

XQ. 69. Did you go to the office before you went through the plant?

A. If I remember correctly, we did not.

509 XQ. 70. Anyone offer any kind of objections to your going into the plant?

A. No, sir.

XQ. 71. In the daylight, weren't you?

A. Yes, sir.

XQ. 72. No objections to your taking pictures of the machine you saw there?

A. Yes, there were obstacles.

XQ. 73. Did you make any measurements while you were there?

A. No, sir.

510 XQ. 74. It was possible for you to make measurements while you were there, wasn't it?

A. I suppose we could.

XQ. 75. Now, is that the only time you saw that machine in the Bowman Dairy?

A. No, sir.

XQ. 76. You go there quite frequently, do you?

A. I have been there quite a few times.

XQ. 77. There has been no objection to your going and examining the machine?

A. No, sir.

XQ. 78. Were you there at the same time as Mr.

Threedy, the man who made a chart of this? 511

A. No, sir.

XQ. 79. Now, as to the amount of savings in the drip saver. That is measured largely by the amount of milk left in the can, isn't it?

A. Yes, sir.

XQ. 80. And assuming that there was carelessly left in the can a large quantity, then there would be a bigger amount going into this drip saver, wouldn't there? 512

A. Yes, sir.

XQ. 81. Now, how many years have you been connected with the milk business all told?

A. About nineteen years.

XQ. 82. Now during this nineteen years, milk cans have been used all that time, haven't they?

A. Yes, sir.

XQ. 83. Have you observed any method of draining milk cans other than inverting the can?

A. Yes, sir.

XQ. 84. What other method have you noticed? 513

A. Of draining a can?

XQ. 85. Yes.

A. No, I answered too quick.

XQ. 86. In all of those nineteen years, there has been an effort to drain the cans by turning them up-side down?

A. No, sir.

XQ. 87. You have seen the farmers do that when they dumped their cans, have you not?

A. No, sir.

XQ. 88. During that time, as you said, that you

have been everything from the barn man up to the horse doctor, and from patentee of this Paulson Dairy machine, have you ever yourself made a scientific study of mechanical laws?

A. No, sir.

XQ. 89. You haven't studied patent law, either, have you?

A. No, sir.

XQ. 90. Now you don't hold yourself out as an expert on mechanical laws, do you?

515 A. Only in certain lines.

XQ. 91. Well, could you for instance, name to us the fundamental laws of motion?

A. I don't know as I could, only that it is something moving—gravity is.

XQ. 92. Name any principle of mechanical laws of motion that you wish, of any kind.

By Mr. Potts: This line of cross-examination is objected to as being incompetent. The witness is offered as a practical mechanical

516 expert in reference to can washing and bottle washing machines only, and he has made no attempt to qualify as a scientific theoretical expert.

By Mr. Staples: I will follow your suggestion on that.

XQ. 93. You don't claim to be an expert along mechanical lines?

A. No, sir.

XQ. 94. You don't claim to be an expert along any practical lines going into the laws of equivalents in mechanics?

A. No, sir.

XQ. 95. And you wouldn't feel yourself competent to pass an expert testimony or practical testimony comparing whether the movement of milk cans by hand was equivalent to the movement by an endless chain, would you?

A. You gain the same results.

XQ. 96. Now that is not answering my question. First, do you think you are expert enough to answer that question scientifically?

A. Which question is that?

XQ. 97. Whether the mechanical shoving of cans by hand is equivalent to the mechanical process of carrying the cans on an endless carrier to a milk washing machine. Are you expert enough to state it?

By Mr Potts: Read the question.

XQ. 98. First I ask you whether you consider yourself expert enough to state that?

A. I would say no, because there is a whole lot to that question.

XQ. 99. You say no?

By Mr. Potts: He said "I say no, because there is a whole lot to that question."

A. It leads a long ways.

XQ. 100. Leave out of the question whether or not you are qualified as an expert, in getting milk cans clean, in your own judgment from your experience, is shoving milk cans by hand through a machine equivalent mechanically to putting the cans through on an endless carrier?

520 A. That is practically the same question as was asked before.

XQ. 101. You can't fairly answer it, can you?

A. No, it leads a long ways.

XQ. 102. Now you gave testimony about a thawing device. Were some of the savings you have been talking about in connection with the thawing device?

A. Yes, sir.

521 XQ. 103. Was that the Lathrop-Paulson Company's patent?

A. Yes, sir.

XQ. 104. That wasn't the Blair patent?

A. No, sir.

By Mr. Staples: That is all.

Re-Direct Examination by Mr. Richards:

RDQ. 1. You have been questioned about this hearing before Judge Carpenter. Now will you please state just what occurred on that day, as

522 you recall it?

A. The case was called by Judge Carpenter and Mr. Potts was called upon and Mr. Richards, and Mr. Bean, attorney for the Rice & Adams Corporation. Mr. Potts and Mr. Richards gave their side of the case, and Mr. Bean, as I seen it, appeared to give his side by showing a lot of blue-prints colored up with different colors of chalk, and Judge Carpenter said he didn't care to see them at all. He said that the tanks and the working part inside of the machine was not in question in this case.

523

By Mr. Staples: This is all under all these objections.

By Mr. Richards: You will interrupt him again.

Witness (continuing) The thing that was in question in this case was supplying a drip can saver hooked up in connection with a milk can washer, which would speed up operation, save time and labor and the milk uncontaminated by the washing fluid. The case was decided in favor of Mr. H. D. Lathrop.

524

RDQ. 2. Will you please state the number of cans which can ordinarily be washed in a Lathrop-Paulson can washing machine and which can ordinarily be washed by hand, if you know?

A. With the Lathrop-Paulson can washer, you can wash anywhere from one can to 840 per hour. As far as washing by hand, I wouldn't state the amount that any one man could wash.

RDQ. 3. Did you ever wash any cans yourself?

A. Yes, sir.

525

RDQ. 4. By hand?

A. Yes, by hand and by machine.

RDQ. 5. Well how many could you say, to the best of your ability, that you could wash yourself in an hour by hand?

A. 150 cans.

By Mr. Richards: That is all.

Re-Cross Examination by Mr. Staples:

RXQ. 1. The case that you have heard of before

526 Judge Carpenter was against the Bowman Dairy, was it not?

A. Against the Bowman Dairy Company and Rice & Adams.

RXQ. 2. You didn't know that Rice & Adams had been released as a party of defendant in that case?

A. Not to my knowledge.

RXQ. 3. Did Mr. Bean state at the hearing that he was the attorney for Rice & Adams?

527 A. Yes, sir.

RXQ. 4. You swear to that positively?

A. Yes, sir.

RXQ. 5. Wasn't Mr. Bean the only lawyer who appeared in behalf of the defendant in that law suit?

A. There were three or four there. I don't know whether he was the only lawyer.

RXQ. 6. He was the only lawyer who spoke in behalf of the defendant, wasn't he?

528 A. There was a lawyer there by the name of Herriott.

RXQ. 7. He spoke in behalf of the defendant that day?

A. Mr. Herriott is the Bowman Dairy attorney.

By Mr. Staples: I didn't ask you that. I ask to have that stricken out.

RXQ. 8. Did Mr. Herriott appear before Judge Carpenter at this hearing that you were giving testimony about?

A. Yes, sir.

529

RXQ. 9. Was any testimony given whatever at that hearing?

A. Yes, sir.

RXQ. 10. Wasn't it entirely an argument between Mr. Potts and Mr. Richards and lawyer Bean.

RXQ. 11. Was there any testimony given there besides these arguments?

A. Yes, sir.

RXQ. 12. Did you testify yourself?

A. Yes, sir.

530

RXQ. 13. And before Judge Carpenter?

A. Yes, sir.

RXQ. 14. At the time that Mr. Bean made his argument?

A. Not in the court-room, no, sir.

RXQ. 15. Well that is what I am talking about, at the time of the argument in the court-room.

A. That argument was in the court-room on the day the case was decided.

RXQ. 16. I am talking about the evidence that was taken in Mr. Potts' office. Was Judge Carpenter there then?

531

A. No, sir.

RXQ. 17. I am trying to confine your examination to a hearing when Judge Carpenter was there. Did you ever give any testimony when Judge Carpenter was there?

A. No, sir.

RXQ. 18. Did you ever hear testimony given by anyone else in the presence of Judge Carpenter?

A. Mr. Potts, Mr. Richards and Mr. Bean.

RXQ. 19. Mr. Witness, they are lawyers that argue it. They're not witnesses. You didn't hear them give testimony. They were arguing the case. Isn't that so?

A. Yes.

RXQ. 20. And they were not giving testimony, were they?

A. No.

RXQ. 21. And you didn't hear any testimony given before Judge Carpenter?

533 A. Not when Judge Carpenter was there.

By Mr. Potts: I object to this line of questioning. I think it is entirely improper and not cross-examination. The witness has been examined at great length and form, and stated that he was not a lawyer and didn't understand these technicalities, and stated that he gave his deposition but did not testify in court, and it is apparent that the witness is confused in the manner of asking questions, as to whether counsel is referring to the taking of depositions or not.

534

By Mr. Staples: The suggestion is good, and I wish you would therefore confine all of your answers to the taking of testimony before Judge Carpenter, in which Judge Carpenter in question, was present.

Witness: That is the idea. Bring it on so I can understand it.

RXQ. 22. And didn't you understand it then?

A. No, sir.

RXQ. 23. Did you ever give testimony upon the

Blair patent at a place where Judge Carpenter was present in person? 535

A. No, sir.

RXQ. 24. Did you ever hear any testimony given by anyone else in such case?

A. No, sir. Can I add.

By Mr. Staples: Not when you have answered the question.

By Mr. Potts: He can make an explanation.

By Mr. Staples: No, he can't. 536

By Mr. Potts: He can go ahead and make an explanation when he answers a question.

RXQ. 25. Do you need, for truth's sake, to make a further statement in answer to the question you have just made?

A. I do.

RXQ. 26. Now make the statement that would clear up this matter.

A. It wasn't when taking evidence, it was when Judge Carpenter was present.

RXQ. 27. You didn't hear anything when he was present in the way of evidence and the day when you saw Mr. Bean and Mr. Potts there, you didn't hear Judge Carpenter make any decision of that case? 537

A. I certainly did

RXQ. 28. That day? Just what did Judge Carpenter say?

A. In favor of the Lathrop-Paulson Company.

RXQ. 29. Is that what he said, "in favor of the Lathrop-Paulson Company"? But he decided it right there?

538

A. As far as I remember.

RXQ. 30. You were there, weren't you?

A. I know the case was decided on that day.

RXQ. 31. Did you, on that day, hear Judge Carpenter pronounce a decision of the argument that had just been made before him by Mr. Potts and Mr. Bean? Yes or no?

A. I wouldn't say positively, because that was a long while ago.

539 RXQ. 32. Didn't you, in your testimony, in answer, state positively that he decided it in favor of Lathrop-Paulson?

A. Yes, sir.)

By Mr Staples: That is all.

By Mr. Potts: For your information, I will say that he did decide it right there.

By Mr. Staples: Mr. Potts makes the statement that Judge Carpenter announced his decision right then and there. And he did it without looking at the exhibits that Mr. Bean had?

540

By Mr. Potts: He had had the case under advisement, and he stated that he had gone over it in detail very carefully.

By Mr. Staples: Now you are not testifying. I ask to have that stricken out—all that Mr. Potts has said. Strike it out!

By Mr. Richards: The reporter hasn't any right to strike it out.

By Mr. Staples: I would only report what is competent.

541

By Mr. Richards: And you decide what is competent?

By Mr. Staples: Oh no, I leave that to Mr. Richards in this office, who seems to be doing all the deciding here.

Re-Cross Examination by Mr. Staples:

RXQ. 1. A milk saving device such as a drip pan, must be, for convenience, at the receiving end of a washing machine, must it not?

542

A. To make it handy, it is the practical thing.

RXQ. 2. Perfectly obvious that this is the place to put it. For the sake of keeping it uncontaminated from steam and washing fluids, it must also be outside of any kind of a housing, must it not?

A. Yes, sir.

RXQ. 3. It is possible that you knew of such drip pans in front of washing machines as early as milk cans were washed by washing machines. Did you know of them before?

543

A. No, sir.

RXQ. 4. You would be surprised would you then, to know that such savings device did exist which were in common use in connection with milk cans before? About nineteen years.

By Mr. Potts: This is objected to as being improper cross examination. Defendant's counsel does not ask the witness as to facts, but simply as to whether or not he might be surprised at some statement that counsel might make.

544 George E. McFadyen

Mr. Staples: I withdraw that question.

RXQ. 5. Assume, Mr. Paulson, that in 1900 or before 1905, that there were milk washing machines and that devices existed and were used for drippings from milk, that would be, in your opinion, exactly what you have been testifying about—milk saving devices in connection with washing machines?

By Mr. Richards: The question is objected
545 to as not proper cross-examination, no proper foundation having been laid.

A. Drip savers have been in existence for years and years. The principle of this patent is to speed up production, save the product which you are handling uncontaminated by any washing fluid.

RXQ. 6. All those things in combination is the principle.

A. That is the idea.

RXQ. 7. And they may have existed nineteen years ago, in your opinion?

546 A. Not in my opinion, no.

ADJOURNED UNTIL 10:00 O'CLOCK

THURSDAY, JANUARY 28, 1926

THURSDAY, January 28, 1926, 10:00 A. M.

MET PURSUANT TO ADJOURNMENT

PRESENT AS BEFORE

GEORGE E. McFADYEN

George E. McFadyen, being produced as a

witness, in behalf of plaintiff, after being first duly sworn, in response to interrogatories of counsel, testified as follows:

Direct-Examination by Mr. Richards:

Q. 1. Please state your name, residence and occupation.

A. George E. McFadyen; 4849 Fulton Street, Chicago; dairy supply business.

548

Q. 2. With what concern are you now connected?

A. Illinois Creamery Supply Company.

Q. 3. Were you ever connected with Rice & Adams Corporation of Buffalo, New York, and if so, in what capacity?

A. I was for two years in the employ of Rice & Adams as erecting engineer; three years in charge of the Chicago office.

Q. 4. During what years was that connection, please?

A. From June, 1919 until November, 1924.

549

Q. 5. Did you ever have anything to do with the sale and installation by that company, of a can washing machine in the plant of the Bowman Dairy Company, Chicago? Please answer that yes or no.

A. Yes.

Q. 6. Please state what your connection was with that machine.

A. Overseeing the installation.

Q. 7. About when was that machine installed as near as you can state?

550 George E. McFadyen

A. I would not say positively; about 1920, I think.

Q. 8. Would you recognize a cut of that machine if you saw one?

A. Yes, sir.

Q. 9. I hand you Plaintiff's Exhibit No. 5, and Plaintiff's Exhibit No. 6, and ask you to examine said exhibits and state whether or not you find that machine illustrated in either or both of said exhibits, and if so, which figure shows the machine.

551 A. Both Figure 610 shown on one side and Figure 385 shown on the opposite side.

By Mr. Staples: What numbers are they on?

By Mr. Richards: 385 is on No. 5, and 610 on No. 6.

Q. 10. I note also a machine illustrated on Exhibit 5 in Figure 386, and ask you to state what, if anything, is the difference between that and the machines you have just identified.

552 *By Mr. Staples*: My objections stand for all the witnesses of

By Mr. Potts: I think that was made clear yesterday to cover all of the witnesses.

A. This is an older style of machine.

By Mr. Mitchell: What one is that?

By Mr. Richards: 386 on No. 5.

Witness (continuing): The pumps are different and the drive is different.

Q. 11. How about the drip pan arrangement?

A. The drip pan arrangement is practically the

553

same. There is a drip pan on both, but a trifle different in construction is all.

Q. 12. You stated, I believe, that you oversaw the installation of that machine. Just how far did you go in this installation as to the operation of the machine, if any?

A. I stayed with the machine until it operated, and showed them how to operate it.

Q. 13. How about in these operations, as to the drip pan?

554

A. I don't understand what you mean.

Q. 14. Was the drip pan used when you so operated the machine for the installation?

A. Yes, sir.

Q. 15. Were you connected with the Rice & Adams Corporation during the time when certain litigation was conducted by Harry D. Lathrop against the Bowman Dairy Company, in the United States District Court here?

A. Yes.

Q. 16. Please state, if you know, who conducted 555
that litigation on behalf of the Bowman Dairy Company.

By Mr. Staples: That is objected to for the further reason that obviously the witness is not competent to state, not being a party to this evidence, and whether he knows or not, is immaterial.

A. The only one that I knew was the Rice & Adams lawyers.

Q. 17. Who was Rice & Adams lawyers in that litigation, if you know?

556 A. Mr. Bean.

Q. 18. Where was he from, if you know?

A. From Buffalo.

Q. 19. How about Mr. Orlando Adams. Did you know him in that connection?

A. Yes.

Q. 20. And what, if any connection did he have with that litigation, if you know?

A. He was furnishing the lawyers, so he told me.

557 *By Mr. Staples*: I ask to have it stricken out as not responsive.

Q. 21. Please state, if you know, who paid the expenses of that litigation.

A. That I couldn't say.

By Mr. Richards: That is all, Mr. McFadyen.

Cross-Examination by Mr. Staples:

558 XQ. 1 Mr. McFadyen, you are in the dairy manufacturing business or connected with the dairy business in some way now, are you not?

A. Yes, sir.

XQ. 2. What is your business here in Chicago?

A. Dairy supplies. We manufacture and pasteurize them.

XQ. 3. You have been in that business ever since 1924?

A. Yes, sir.

XQ. 4. Prior to 1919, had you had experience also in dairy machinery?

559

A. Yes, sir.

XQ. 5. How early or how many years have you had experience?

A. In the dairy machinery line?

XQ. 6. Yes.

A. For the last twenty-two years.

XQ. 7. All of your business life practically?

A. Yes, sir.

XQ. 8. You haven't any prejudice against either party in this law suit?

560

A. None whatever.

XQ. 9. Who first talked to you about being a witness in the case?

A. The first I knew about it was the day before yesterday, that I was given summons in the case.

XQ. 10. You don't know how the lawyers got your name?

A. No.

XQ. 11. Now you have given some testimony about a certain law suit. You don't know anything about it of your own knowledge, except that you heard about it?

561

A. I was present at the time depositions were taken.

XQ. 12. But you could not state who the parties defendant were in that law suit, could you?

A. Yes I could.

XQ. 13. Who were they?

A. Rice & Adams and Harry D. Lathrop.

XQ. 14. When the depositions were taken, you understood that Rice & Adams was a party defendant, did you?

562 George E. McFadyen

A. Yes.

XQ. 15. You are entirely mistaken if that is not so, are you?

A. Yes, if it is not so.

XQ. 16. You didn't see any of the papers yourself, did you?

A. No, sir.

XQ. 17. You don't know who the lawyers—withdraw that question. Of your own knowledge, do
563 you know who the lawyers were for the Bowman Dairy?

A. I didn't know Bowman Dairy had any lawyers.

XQ. 18. They were defendants, you know?

A. Yes, I knew they were defendants.

XQ. 19. Would you wish to swear that Mr. Bean—did you say Mr. Bean or Dean?

A. I didn't say how his name was spelled.

XQ. 20. You wouldn't wish to swear that Mr.
564 Bean was the lawyer for the Bowman Dairy Company?

A. Only what he told me himself.

XQ. 21. Did Mr. Bean tell you he was the lawyer for the Bowman Dairy Company? I want to get it just right, Mr. McFadyen. If you have any definite knowledge of your own, I want to get it, but I am asking you whether all of your knowledge is not derived from hearsay?

A. It is only derived from what they told me themselves, while being there with them.

XQ. 22. You wouldn't wish to swear that Mr.

Bean told you that he wasn't the lawyer for the Bowman Dairy?

A. He didn't say he wasn't.

XQ. 23. You wouldn't swear at the present time that the Bowman Dairy Company was the only party in the law suit in which depositions were taken?

A. No, I wouldn't.

XQ. 24. You have come to give this testimony about the lawyer and about Rice & Adams just from your general impressions about what took place there?

A. And what was told me.

XQ. 25. Did you not know, as a matter of fact, it was a fact—that Rice & Adams was released from defending the case at all by the court, before there were any depositions taken? You didn't know that?

A. I couldn't say, no, sir.

XQ. 26. You didn't have any talk with Mr. Orlando Adams about Rice & Adams being released from it entirely?

A. No.

XQ. 27. Your conversation with Mr. Orlando Adams was to the effect, was it not, that at one time Rice & Adams had been a party in that law suit, so that they were involved in it in some method?

A. Yes.

XQ. 28. And you gave your testimony supposing that the same condition continued on?

A. No.

568 George E. McFadyen

XQ. 29. Did you have any conversation with him about Rice & Adams continuing as parties in that law suit?

A. Not as parties in the law suit, no.

XQ. 30. Now is this 386, Plaintiff's Exhibit 5, you said that wasn't—

A. That is an older style machine than the one in question.

XQ. 31. Does that show the drive mechanism?

569 A. No, it doesn't.

XQ. 32. That machine is not the machine that was at the Bowman Dairy?

A. No, sir.

XQ. 33. There is a machine 385, I understood you to say, that is really the reverse of this machine 386?

A. No, the reverse of this machine here.

XQ. 34. The reverse of 610?

A. Yes.

XQ. 35. Does 385 show the driving mechanism?

570 A. Partly, yes here.

XQ. 36. Does it show it at the entrance or the receiving end of the washing machine?

A. No, it cannot be seen there.

XQ. 37. There was a driving device or conveying device in the Bowman machine?

A. Yes, sir.

XQ. 38. In the particular of the mechanism in the receiving end of the machine, this figure 385 is different?

A. This is the same as the one larger.

XQ. 39. It does not show it.

571

A. It does not show the drive. The feeding end of the machine is the same.

XQ. 40. You would say it from your own knowledge, but this figure does not show it.

A. No, the figure does not show it.

XQ. 41. That figure does not show it as it is.

A. Yes it does.

XQ. 42. Will you please mark where it shows the kind of feeding device in the front end of the figure 385?

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A. The only thing you can see is the driving rods or push rods as they are known right here.

XQ. 43. "A" mark—would that show it?

A Yes.

XQ. 44. I can't see them there. Are they visible?

A. All that is visible there are the hooks that shove the can through.

XQ. 45. Does it show the lugs?

A. Yes, sir. Lugs in each one.

XQ. 46. Now in Figure 610, does that show the driving mechanism that was on the Bowman Dairy machine?

573

A. Not on the feed end.

XQ. 47. Does it show a milk saver drip pan as it was on the Bowman Dairy machine?

A. Yes, sir.

XQ. 48. Figure 233, does that show the milk saving device?

A. No, sir.

XQ. 49. Does it show the feeding or push rods?

A. It can't be seen here, no.

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XQ. 50. The machine—the cut 233, does that accurately illustrate cut 610? It is Figure 545.

A. With the exception of the drip saver, yes.

XQ. 51. Neither one of them showing, as you said, the push rod?

A. You can't see them.

XQ. 52. And is Figure 610 the same machine as Figure 385?

A. Yes, sir.

XQ. 53. And the same Figure as 386?

575 A. No, that is not the same machine.

XQ. 54. They are two different machines?

A. Yes, two different machines.

XQ. 55. Now I show you Defendant's Exhibit No. 5 for identification. You recognize from a blueprint of that kind what is illustrated?

By Mr. Richards: Objected to as improper cross-examination.

Mr. Staples (continuing): Does that fairly represent the saving device and the receiving

576 end of a wash machine in the same manner as the Exhibits 5 and 6 of the machine at the Bowman Dairy?

A. Yes, sir.

By Mr. Richards: This line of examination is further objected to on the ground that the witness was not examined in direct examination about any of these drawings or blueprints, and it is requested that this and the previous objection be considered to apply to each and every question along this line. Motion is made that all of such testimony be

stricken out, and that in such regard, the witness be considered the witness of the defendant.

XQ. 56. Mr. McFadyen, the previous question asked and this one, I am merely getting your testimony in reference to the description of the machine there at the Bowman Dairy, to see whether you recognize the principles that were involved in that machine, so that you can describe it for the court. Mr. McFadyen, I show you Defendant's Exhibit No. 1 for identification, and ask 578
you first whether from your experience, and from your seeing the machine in the Bowman Dairy, if you recognize the illustration of savings device in connection with the can washer?

A. I recognize the saving device, yes.

XQ. 57. Now, as a matter of fact, so far as the drip saver illustrated and the receiving end of inverted cans, it is substantially as that of the Bowman Dairy?

A. Yes, it is.

By Mr. Richards: I understand, Mr. Staples, that you consent that the objection and motion applies to all of this testimony? 579

By Mr. Staples: Yes, all of them.

XQ. 58. Your observation in reference to this is in describing the Bowman machine just the same as you use your observation in looking at the cut 5 and 6 illustrated before?

A. Yes.

XQ. 59. I show you Defendant's Exhibit No. 2 for identification, and ask you if you recognize that as a fair illustration of the substance of your

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description of the Bowman Dairy machine as to the savings pan and the inverted can similar to it?

A. Yes.

XQ. 60. Now I show you another exhibit, Defendant's Exhibit No. 4, for identification, and where there is an inverted can at the receiving end of a washing machine, you see what that illustrates, do you not?

A. Yes, it is supposed to illustrate a drip saver.

581 XQ. 61. Does that illustrate the idea of what you saw there at the Bowman Dairy?

A. Yes, it illustrates the idea.

XQ. 62. As a matter of fact, all there was to that observation and to this thing you saw at the Bowman Dairy, was a convenience of milk cans in inverted position with a pan underneath this convenience to gather the drippings, was it not?

A. Yes, sir, that is all there is to it.

XQ. 63. You have had experience ever since you were a boy with milk cans, and isn't it a fact,

582 that ever since you have had any experience with milk cans that you have seen various conveniences for the holding of milk cans in an inverted positio, like racks and things of that kind to drain out?

A. Yes, sir.

XQ. 64. It has been a matter of just ordinary prudence that drippings from milk could be used and saved, kept in a pan, pail or tub, isn't that so?

A. Yes.

XQ. 65. Now just assume that there was a

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kitchen-table the size of the receiving end of this machine, and the cans were inverted on a little sunken sink in that table, being inverted, the remaining drops in the can would flow down into that sink, tub, trough, precisely the same as in the machine you saw in the Bowman Dairy, wouldn't it?

A. Certainly.

XQ. 66. It would save just as much?

A. Yes.

584

XQ. 67. And so far as the drip pan was concerned, if you shoved the table along as the convenient thing to store the cans on, and you had a hole in the bottom of the sink so that the drops would flow down to it, to that extent—to the extent of all the savings, you would have that in operation—a kitchen table with a sink in it, wouldn't you?

By Mr. Potts: This line of argument and speech making to the witness, is objected to, and notice is given that the court will be asked to take it into consideration in taxing the costs of this case, as this record will ultimately have to be printed, and it is not the proper place and time for argument of the case.

585

XQ. 68. Mr. Witness, Mr. McFadyen, you didn't understand that I was arguing with you?

A. There was no argument about it.

XQ. 69. You understood in the best way I could make it, that I was asking you, if you had years

586 of experience in the milk business, what you knew to be facts, didn't you?

A. Yes.

XQ. 70. Let me ask you this question—I show you Defendant's Exhibit No. 3 for identification, the figure on the righthand side, where there is in lead pencil the letter C, A-B to merely indicate the can washing machine, you see what that illustrates don't you?

587 A. Yes.

XQ. 71. Isn't it a fact that the drip saver C is like the drip saver C of Exhibit 4 for identification, except that the drip saver is just turned around?

A. Turned around, yes.

XQ. 72. Now in principle, so far as a milk saving drip device is concerned, does this Defendant's Exhibit No. 3 illustrate fairly the machine you have been describing at the Bowman Dairy Company?

588 A. No.

XQ. 73. In what particular not?

A. In the drip saver itself.

XQ. 74. In being turned around?

A. Yes.

XQ. 75. I said with just that exception, does it fairly?

A. Fairly, yes.

XQ. 76. I would like to ask you a question. As a matter of fact, on this Bowman Dairy machine were the inverted cans ever taken through that

Bowman Dairy machine, to your knowledge, by a continuous chain device?

A. No, sir.

XQ. 77. That didn't have that on it at all, did it?

A. No, sir.

XQ.78. Nor nothing like it?

A. No, sir.

Re-Direct Examination by Mr. Richards:

590

RDQ. 1. Please give us a brief statement as to the character of the mechanism on that machine which you installed in the plant of the Bowman Dairy Company for feeding the milk cans through the machine.

A. It is done with two dog bars—one for cans and one for covers. It is operated by an intermittent gear. Dogs placed upon these cans that pulled the cans through the machine.

RDQ. 2. And as I unlerstand it, this would result in a sort of an intermittent step by step movement of the cans. Is that right? 591

A. Yes, sir.

RDQ. 3. Now you spoke about a Mr. Dean who represented the Rice & Adams Corporation in the previous litigation. Might this have been Mr. Bean, or what do you remember?

A. I might be wrong—Dean or Bean—I may have it wrong.

By Mr. Staples: Counsel for the defense wishes to have eliminated from the question the assertion of counsel that either lawyer

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"Bean" or "Dean" or any other lawyer, did in fact, represent Rice & Adams in any other former litigation, in that it is immaterial, and further that there is no evidence in this case to the effect that Rice & Adams were parties in that case. it being well known by counsel that Rice & Adams, by order of the court, were excused from defense of the case before any testimony was taken.

593 RDQ. 4. Please state what connection, if any, you had with the taking of depositions in that case.

By Mr. Staples: That is objected to as incompetent and immaterial, and not the best evidence.

A. I was called in from out of the city to be present at the taking of depositions here, which I was.

RDQ. 5. Who called you in?

A. Rice & Adams.

594 RDQ. 6. And where were those depositions taken, do you recall?

A. Mr. Potts' office. I don't remember just where it was now.

RDQ. 7. And was this Mr. Bean, or this Mr. Dean that you have referred to, the attorney who was conducting those depositions on behalf of the Rice & Adams Corporation?

By Mr. Staples: Well that is objected to.

By Mr. Potts: Your objections stand to all of it.

By Mr. Staples: I want it put that the ob-

jection is that it is asking a lay witness what was the relationship between the lawyer and a law suit and different parties, and obviously any information is hearsay information and is not the best evidence in the case and it is not proper to call for a conclusion which this man is not competent to give.

A. Yes.

RDQ. 8. About this same time, did you have any conversation with Mr. Orlando Adams in regard to this litigation, and if so, what conversation? 596

A. Yes, I had conversation and a letter from him saying that they were defending the case.

By Mr. Staples: Have you got the letter, Mr. McFadyen?

By Mr. Richards: Just a moment! You haven't a right.

By Mr. Staples: I have a right.

By Mr. Richards: You have not got a right.

By Mr. Staples: You can take it on your record if you want to and this is obviously the best. 597

By Mr. Richards: The interruption of counsel for the defendant is vigorously objected to, and notice is hereby served upon counsel for defendant, that if there is any further interruption on his part in the actual testimony of a witness to prevent the giving of that testimony, that these proceedings will be adjourned to meet before one of the federal judges here tomorrow morning at 10:00

598 o'clock, where a ruling can be had on the conduct of counsel.

By Mr. Staples: Counsel for defendant wishes it to appear of record that the statement of plaintiff's counsel is uncalled for and does not represent any interruptions on the part of counsel for defendant, none of which have been in truth in this case, and that the request of the witness was for the production of a letter rather than secondary evidence to this

599 question, which he deems to be the proper form of evidence, rather than the contents of the letter orally.

By Mr. Richards: Then counsel for defendant interrupted right into the middle of the answer of the witness to investigate this matter about this witness, before he knew whether the letter was going to be introduced or not, and before the witness had finished telling what the conversation was with Mr. Adams.

600 *By Mr. Mitchell*: Let it go.

By Mr. Potts: Go back and read the question and read the answer as far as Mr. McFadyen got before he was interrupted.

(Reporter reads questions and answer)

Witness (continuing A to RDQ 8) with their lawyers against the Bowman Dairy Company, whom I should meet in Chicago, (I can't say the date) and be with him while depositions were being taken at the office of a Mr. Potts, which I did.

By Mr. Staples: Just a moment! I ask to

601

have the answer stricken out on the ground that is appears by the answer itself that the witness was giving the substance of a letter which was in the beginning of the question, the substance of my objection.

RDQ. 9. Have you that letter with you that you refer to?

A. No, I haven't.

RDQ. 10. Do you know where it is?

A. I couldn't say—I may still have it in my possession and may not. 602

RDQ. 11. Will you try to find it and let us know, and return here again tomorrow morning at 10:00 o'clock if you can find the letter?

A. I will.

RDQ. 12. Now I gather from the purport of your testimony, that following the instructions thus received, you did attend and assist this lawyer, Mr. Bean or Mr. Dean, at the taking of these depositions in Mr. Potts' office?

By Mr. Staples: That is objected to also, as leading. 603

A. Yes.

By Mr. Richards: The question is of course, leading, and purposely so, but it is submitted fairly, sums up the purport of the testimony of this witness.

RDQ. 13. Aside from the letter that you received, did you have any oral conversation or instructions from Mr. Adams in this regard, and if so, please state what you recall in that connection.

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A. Simply told me they were furnishing the lawyers to defend the case.

By Mr. Richards: That is all.

By Mr. Richards: Assigment of James R. Blair of United States Patent No. 880,713, dated March 3, 1908, to Joshua R. H. Potts of Chicago, Illinois, executed on the 23rd day of May, 1917, and in words and figures as follows:

"Department of the Interior

605 UNITED STATES PATENT OFFICE

RECEIVED AND RECORDED on the 28th day of May, 1917, in Liber A 102, page 406 of *Transfers of Patents.*

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to

(PATENT be hereunto affixed.

OFFICE Exd. THOMAS EWING,

Seal) E. L. D. *Commissioner of Patents.*

"*ASSIGNMENT.*

TO WHOM IT MAY CONCERN:

606 Be it known that I, JAMES R. BLAIR, of the City of Cambridge, County of Middlesex and Commenwealth of Massachusetts, having invented certain alleged new and useful improvements in Can Washing Machine, for which I filed an application for Letters of Patent in the United States Patent Office December 21, 1906, Serial No. 348,892, and for which I was granted Letters Patent of the United States No. 880,713, dated March 3, 1908; and that I am now the sole and exclusive owner of said invention and of said Letters Patent; and have not assigned, leased or licensed

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others to use the same, except the companies hereinafter mentioned: and

WHEREAS, JOSHUA R. H. POTTS, of the City of Chicago, County of Cook and State of Illinois is desirous of acquiring the entire interest in said invention and the said Letters Patent granted therefor, subject only to the right of the Milk or Dairy Companies with which I am now associated, i. e. C. Brigham Company; Elm Farm Milk Company; Providence Dairy Company and D. Whiting and Sons, or in case I sever my connections with said Companies, then with any Milk or Dairy Company with which I may be associated, shall have the right to make and use the invention covered by said Letters Patent for its own use, but not to manufacture or sell said machines covered by said Letters Patent nor to license others to use the same.

608

NOW, THEREFORE, TO WHOM IT MAY CONCERN—

609

Be it known that I, the said JAMES R. BLAIR in consideration of the sum of One Thousand Dollars ($1,000.) to me in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable considerations have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said JOSHUA R. H. POTTS, his assigns, executors, administrators and legal representatives, the sole and exclusive right in and to said invention and the Letters Patent of the United States granted therefor March 3, 1908, No. 880,713, with the full

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power and right to sue, or cause to be sued, in his or his assignee's own name, for all past, present and future infringements, and to collect for his or their own use all profits and damages or royalties for any past, present or future infringements of said Letters Patent, as fully and completely as I could do had this sale and assignment not been made, reserving only the right of the said Milk or Dairy Companies with which I am now associated, or in case I sever my connections with said
611 Companies, then with any Milk or Dairy Company with which I may be associated, shall have the right to make and use the invention covered by said Letters Patent for its own use, but not to manufacture or sell said machines covered by said Letters Patent nor to license others to use the same; nor shall any of said companies that I am or may be associated with have the right to manufacture any new machines, nor to use the same, after I sever my connections with said Companies, nor to license others to manufacture or use
612 the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal at the City of Worcester and County of and Commonwealth of Massachusetts this twenty-third day of May, A. D. 1917.

JAMES R. BLAIR (SEAL)
Inventor's Full Name.

IN PRESENCE OF:

CARL M. BLAIR
ANNA I. BIGELOW

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF WORCESTER
ss

Personally appeared before me, a notary public within and for the County and State aforesaid, James R. Blair, who subscribed his name to the foregoing instrument after having read the same over and having its contents fully explained to him, and acknowledged that he signed the same as his own free act and deed.

IN WITNESS WHEREOF I hereunto set my hand and seal this twenty-third day of May, 1917.

CARL M. BLAIR
Notary Public."

is hereby introduced in evidence herein and marked "Plaintiff's Exhibit No. 2-a". I also introduce in evidence the Assigment of the same patent by Joshua R. H. Potts of Chicago, Illinois, to the Lathrop-Paulson Company, executed on July 13, 1917, and in words and figures as follows:

"Department of the Interior
UNITED STATES PATENT OFFICE
RECEIVED and RECORDED on the 19th day of July, 1917 in Liber O-103, page 103 of *Transfers of Patents.*

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to (PATENT be hereunto affixed.
OFFICE Exd.
SEAL) E. L. D.

THOMAS EWING,
Commissioner of Patents.

616 George E. McFadyen

"ASSIGNMENT

TO WHOM IT MAY CONCERN:

Be it known that, whereas James R. Blair of the City of Cambridge, County of Middlesex and Commonwealth of Massachusetts invented certain alleged new and useful improvements in CAN WASHING MACHINE, for which he filed an application for Letters Patent in the United States Patent Office December 21, 1906, Serial No. 348,892, for which he was granted Letters Patent
617 of the United States No. 880,713, dated March 3, 1908;

And whereas said James R. Blair assigned said invention and said United States Letters Patent No. 880,713, dated March 3, 1908, under date of May 23, 1917, to me, Joshua R. H. Potts, of the City of Chicago, County of Cook and State of Illinois with certain license restrictions, said James R. Blair representing at that time that he was the sole and exclusive owner of said invention and of
618 said Letters Patent and had not assigned, leased or licensed others to use the same except to the companies mentioned in said assignment;

And whereas I, the said Joshua R. H. Potts purchased said Letters Patent No. 880,713, dated March 3, 1908, in trust as attorney for Lathrop-Paulson Co., a corporation duly incorporated under the laws of the State of Illinois, and whereas said Lathrop-Paulson Co. is now desirous of acquiring the legal title to said invention and the said Letters Patent No. 880,713, dated March 3, 1908, subject only to the restrictions stated in

said original assignment of said James R. Blair bearing date of May 23, 1917, and recorded in the United States Patent Office May 28, 1917, in Liber A 102, page 406, of Transfers of Patents.

Now, therefore, to whom it may concern, be it known that I, the said Joshua R. H. Potts, in consideration of the sum of one dollar to me in hand paid and for other good and valuable considerations, the receipt of which is hereby acknowledged, have sold, assigned and transferred and by these 620
presents do sell, assign and transfer unto the said Lathrop-Paulson Co., a corporation, its assigns, and legal representatives, the sole and exclusive right in and to said invention and the said Letters Patent of the United States granted March 3, 1908, No. 880,713 for Can Washing Machine, with the full power and right to sue or cause to be sued in its or its assignees' or legal representatives' own name for all past, present and future infringements, and to collect for its or their own use all profits and damages or royalties for any past, 621
present or future infringements of said Letters Patent as fully and completely as I could do, had this sale and assignment not been made, reserving only the right of the milk or dairy companies with which the said James R. Blair was associated at the time of making said original assignment, the 23rd day of May, A. D. 1917, namely, C. Brigham Company; Elm Farm Milk Company, Providence Dairy Company and D. Whiting & Sons; or in case said James R. Blair severs his connection with said companies, then with any milk or dairy

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company with which said James R. Blair may be associated shall have the right to make and use the invention covered by said Letters Patent for its own use, but not to manufacture or sell said machines covered by said Letters Patent nor to license others to manufacture, sell or use the same; nor shall any of said companies that said James R. Blair was on May 23, 1917, or may be hereafter associated with have the right to manufacture any new machines, nor to use the same, after
623 the said James R. Blair severs his connection with said companies; nor to license others to manufacture, sell or use the same, these restrictions being the restrictions reserved by said James R. Blair in said original assignment, I hereby assigning, selling and transferring unto the said Lathrop-Paulson Co., a corporation, all of the rights and interest in United States Letters Patent No. 880,713, dated March 3, 1908, acquired by me by the assignment of said James R. Blair, dated May
624 23, 1917 and recorded in the United States Patent Office May 28, 1917, in Liber A 102, page 406 of Transfers of Patents.

IN WITNESS WHEREOF I hereunto set my hand and seal at the City of Chicago, County of Cook and State of Illinois, this 13th day of July, A. D. 1917.

JOSHUA R. H. POTTS (SEAL)
Assignor's Full Name.

WITNESSES:

1 BRAYTON G. RICHARDS
2 ARTHUR A. OLSON

State of Illinois, }
County of Cook. } ss

Personally appeared before me a Notary Public within and for the County and State aforesaid, Joshua R. H. Potts, who after having the foregoing instrument read over and its contents fully explained acknowledged the same to be his own free act and deed.

IN WITNESS WHEREOF I hereunto set my hand and affix my official seal this 13th day of 626
July, A. D. 1917.

A. A. OLSON

L. S. *Notary Public.*

and ask that the same be marked "Plaintiff's Exhibit No. 2-b". I also introduce in evidence the Assigment from the Lathrop-Paulson Company of the same patent to Harry D. Lathrop, which is in words and figures as follows:

"Department of the Interior 627
UNITED STATES PATENT OFFICE
RECEIVED and RECORDED on the 29th day of October, 1918 in Liber F 105, page 329 of *Transfers of Patents.*

IN TESTIOMONY WHEREOF, I have caused the seal of the Patent Office to
(PATENT be hereunto affixed.
OFFICE Exd
SEAL) LLW

(Sgd.) JAMES T. NEWTON,
Commissioner of Patents.

628 George E. McFadyen

"TO WHOM IT MAY CONCERN, BE IT KNOWN,

That Lathrop-Paulson Co., a corporation duly incorporated under the laws of the State of Illinois, and having its principal place of business in the City of Chicago, in the County of Cook and State of Illinois, is the owner of United States Letters Patent No. 880,713, granted James R. Blair, March 3, 1908, and that said James R. Blair
629 assigned his entire interest in said invention and in said Letters Patent, subject to a limited use by any Dairy Company by whom he may be employed for its own use during such employment and not otherwise, to Joshua R. H. Potts, including the right to sue for all past, present and future infringements, which assignment was duly recorded in the United States Patent Office May 28, 1917, in Liber A-102, page 406, of Transfers of Patents, and

WHEREAS, said Joshua R. H. Potts has
630 assigned his entire interest in said invention and the Letters Patent of the United States granted therefor to Lathrop-Paulson Co., a corporation, with full right and power to sue for all past, present and future infringements, which assignment was duly recorded in the United States Patent Office July 19, 1917, in Liber O-103, page 103 of Transfers of Patents, and

WHEREAS, said Lathrop-Paulson Co. is now the sole owner of said invention and said Letters Patent, and

WHEREAS, it has previously agreed to assign

631

to Harry D. Lathrop its entire interest in said invention and in said Letters Patent, including the right to sue for all past, present and future infringements,

Now, Therefore, to whom it may concern, be it known that the Lathrop-Paulson Co,. in consideration of the sum of One Dollar to it in hand paid, and for other good and valuable considerations, the receipt of which is hereby acknowledged, have sold, assigned and transferred, and by these

632

presents do sell, assign and transfer unto the said Harry D. Lathrop, his heirs, legal representatives and assigns, its entire interest and its sole and exclusive right in and to said invention and the Letters Patent of the United States granted March 3, 1908, No. 880,713, for CAN WASHING MACHINES, which were granted to James R. Blair, with full power and right to sue, or cause to be sued, in his own name, or in the name of his assigns or legal representatives, for all past, present and future infringements, and to collect, for his or

633

their own use, all profits and damages or royalties for any past, present or future infringements of said Letters Patent as fully and completely as it could do had this sale and assignment not been made, binding itself and its legal representatives and assigns.

It is further represented by said Lathrop-Paulson Co. that this assignment has been fully authorized and directed by its Board of Directors at a meeting held for that purpose.

IN WITNESS WHEREOF said Lathrop-Paul-

Co. has caused its name to be subscribed hereto by Joshua R. H. Potts, its Vice-President and attested by its Secretary, and caused its official seal to be attached hereto for the uses and purposes herein set forth, at the City of Chicago, County of Cook and State of Illinois, this 21st day of October, A. D. 1918.

LATHROP-PAULSON CO.
JOSHUA R. H. POTTS (SEAL)
Vice-President.

Attest:
M. V. LATHROP
Secretary Lathrop-Paulson Co.

WITNESSES:
HELEN F. LILLIS
ROSE KOSKA

State of Illinois }
County of Cook } ss

Personally appeared before me, a Notary Public within and for the County and State aforesaid, Joshua R. H. Potts, well known to me to be the Vice-President of Lathrop-Paulson Co., a corporation, who, after having the foregoing instrument read over and its contents fully explained, caused the name of said Lathrop-Paulson Co., to be attached thereto by him, its Vice-President, and its Official seal to be attached thereto and attested by its Secretary, and acknowledged the execution of the same as the free and voluntary act of said Lathrop-Paulson Co., and acknowledged that said action had been fully authorized and directed by

637

its Board of Directors at a meeting held for that purpose, all for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this 21st day of October, A. D. 1918.

HELEN F. LILLES

L. S. *Notary Public.*"

and ask that the same be marked "Plaintiff's Exhibit No. 2-c. Leave of court is also hereby requested, permitting the withdrawal of said original exhibits, and the substitution of copies thereof.

638

HARRY D. LATHROP

Harry D. Lathrop, being produced as a witness, in his own behalf, after being first duly sworn, in response to interrogatories of counsel, testified as follows:

639

Direct-Examination by Mr. Richards:

Q. 1. Please state your name, residence and occupation.

A. Harry D. Lathrop; President of the Lathrop-Paulson Company. My home address is 5730 Calumet Avenue, Chicago.

Q. 2. You are the same Harry D. Lathrop who is plaintiff in this case?

A. Yes, sir.

Q. 3. And you are the same Harry D. Lathrop who was plaintiff in the case in the United States

640 District Court, Northern District of Illinois, Eastern Division, entitled "Harry D. Lathrop v. Bowman Dairy Company, a Corporation, in Equity No. 2239. Is that correct?

A. Yes, sir.

By Mr. Staples: All of the objections are repeated by counsel without being repeated to each witness and this witness with the request to strike out also.

641 Q. 4. Please state, if you know, who conducted and paid for the defense in said suit entitled "Harry D. Lathrop v. Bowman Dairy Company".

A. Rice & Adams Corporation, Buffalo.

Q. 5. Is that the defendant here?

A. Yes, sir.

Q. 6. I believe a judgment was recovered in that suit against the Bowman Dairy Company. Please state, if you know, who paid that judgment.

A. I believe the Rice & Adams Corporation paid it.

642 Q. 7. Please state when you first knew that the Rice & Adams Corporation, defendant herein, was paying for and conducting the defense in the said suit entitled "Lathrop v. Bowman Dairy Company".

By Mr. Staples: That is objected to on the ground that the question assumes a fact not proved, but the contrary, in asking for his knowledge, when the witness has stated his belief rather than his knowledge.

A. At the beginning of this suit.

Q. 8. And how about the suit against the Bow-

643

man Dairy Company? When, if at all, did you know during the conduct of that suit, that the Rice & Adams Corporation was conducting and paying for the defense in that suit?

A. At the time of the suit.

Q. 9 As I understand you then, you understood from the beginning of that suit that the Rice & Adams Corporation was conducting and paying for the defense therein. Is that correct?

A. Yes, sir.

644

Q. 10. How long have you been engaged in the manufacture of milk can washing machines?

A. Since 1914.

Q. 11. And what is the principal business of the Lathrop-Paulson Company?

A. Building of milk can washing machinery.

Q. 12. I understand that they also build some bottle washing machinery. Isn't that correct?

A. That is true.

Q. 13. I hand you a catalogue marked "Plaintiff's Exhibit No. 1" and ask you to state, if you know, what that is.

645

A. This is one of our older catalogues made up from different features of the machine, each one more or less in detail.

Q. 14. This suit is based upon the Blair patent. What connection if any, has that Blair patent with the washing machines manufactured by the Lathrop-Paulson Company.

A. The Blair patent covers and protects the saving of the drip milk in connection with one of these machines.

646 Harry D. Lathrop

Q. 15. And as I understand from the purport of your answer, these machines are manufactured under the Blair patent. Is that correct?

A. Yes, sir.

Q. 16. During the years that your company has placed can washing machinery on the market, have the machines always been exactly the same?

A. There have been improvements made on machines from time to time, the drip saver, how-
647 ever, being made practically the same on all types.

Q. 17. About how much would one of these can washing machines weigh, Mr. Lathrop?

A. The weight of the machines has been gradually increased. From the time we started building, from approximately 1000 pounds to as high as 5000 or 6000 pounds at the present time.

Q. 18. And give us some kind of an idea of the dimensions of one of these machines.

A. The machines shown in this catalogue are 20 feet long. Could I refer to my present cata-
648 logue?

By Mr. Richards: Refer to anything you have here.

Witness (continuing) Overall approximately 20 feet by 4 feet 2; between 7 to 8 feet to the top of the hood.

Q. 19. How about the practicability of introducing one of said machines in evidence and taking it into court? What can you say in that regard?

A. I think it would show very clearly the efficiency of the machine throughout, and make it

very plain to anyone whether they are familiar with the machines or not. 649

Q. 20. How about the advisability of taking such a machine into a court-room, as to its size and weight?

A. Well that would be impossible to take the 20 feet machine into a court-room.

Q. 21. Have you any catalogue which illustrates your present types of machine?

A. Yes, sir.

Q. 22. Will you produce one? 650

A. One called the 10 L-P Unequalled Money-Saving Can Washing Features.

By Mr. Richards: The catalogue offered by the witness is introduced in evidence and marked "Plaintiff's Exhibit No. 1-a".

Q. 23. What date was that catalogue No. 1-a published, as near as you can state?

A. I think the first issues were put out in November, 1924—of this particular catalogue. However, it is simply a follow-up of the other 651 catalogues showing the later improvements that have been added to the machine itself.

Q. 24. Now will you briefly and generally describe the operation of these machines which your company manufactures, which are illustrated in these catalogues?

A. These operations are shown in detail on Page 19 of this newer catalogue, Exhibit No. 1-a. The cans are numbered as they pass through the machine, and a correspondingly numbered paragraph describes each operation as the cans pass

652 through the machine. This has been gotten out to show prospective customers just what operations and how many there are as the cans pass through the machine, and it is very complete. Here they are. I might say that the first three paragraphs 1, 2 and 3 are directly explaining the drip pan on this machine, and its use and how used.

Q. 25. Will you please read into the record the description in that catalogue which you have just
653 mentioned and identified.

By Mr. Staples: What was the date of this catalogue?

By Mr. Potts: The first edition was gotten out in 1924.

By Mr. Staples: I notice a letter dated 1925 in there.

Witness: Let me see—it was at the Dairy Show at Milwaukee. I think I must be wrong on that date. I was mistaken just a year in the date.

654 *By Mr. Staples*: I suppose it is not competent, but if you have any descriptions of your Exhibit 1—I understand your Exhibit 1 was made sometime prior to 1920, and this other description was made in 1924 or 1925, subsequent to any claim of infringement—

Witness: What I want to say—this is simply a reproduction of the old book showing the improvements that have been made on the machine since the old catalogue was gotten out. However, as I stated, the drip pan has been used on our machines since the very start—the first ones we ever

655

built made practically the same, and are standard equipment on all of the machines.

Q. 26. And what can you say now as to the date when that specific catalogue, Plaintiff's Exhibit No. 1-a, in just the form it is now, was published?

A. This was released to our jobbers and dealers at the Dairy Show in Milwaukee, which must have been October or November, 1925, because the letters in this book, of recommendation—the recommendation letters rather—are dated 1925, in April, May and so on, so that the book could not have been issued in 1924 as I first testified.

656

Q. 27. You have spoken of the drip saver used on all of these machines. Please state briefly and generally the advantages resulting from the use of this drip saver in such machines.

A. The construction of this drip saver as a part of the machine makes it possible to quickly and thoroughly save all of the milk remaining in the can after it has been dumped, without danger of its being contaminated by the washing fluid. The paragraph No. 3 of the type A machine, will tell you that the No. 3 can is over a vacant space, which eliminates any possible chance of water or fluid contaminating the milk and cream which is saved by the drip pan.

657

Q. 28. And what, if anything, would be the effect of any milk or cream remaining in the dump cans on the washing fluid in the machine?

A. Aside from saving the product, this drip pan has a very effective office of not allowing this milk or cream to be washed into the soda water or

658 Harry D. Lathrop

the washing fluid, thereby making it become unfit for washing and killing the effect of the soda that is used in this solution.

Q. 29. I gather from what you say then, that the washing fluid is used over and over again in washing these cans. Is that correct? ?

A. The soda washing fluid is.

Q. 30. And that the presence of the milk in the washing fluid is very undesirable?

A. That is very correct.

659

Q. 31. Now when milk is collected in this milk saver, what is done with it?

A. From repeated experiences that we have made, we find that this milk saved in this manner, will test from at least one pound higher in butter fat than the whole milk. In some instances, which are rare and are usually confined to certain states, this milk is only used for making butter an so on but in the majority of states the milk is caught, bottled and condensed, or used for whatever pur-

660 pose the milk is originally bought.

Q. 32. You state that the milk collected in this drip saver is richer than the general run of milk. Why is this?

A. This is directly due to the fact that milk standing any length of time, the cream will rise to the top. In cans this rises to the top and clings to the top shoulder or neck of the can, and as the milk is poured out of the can, this cream still adheres to the neck or shoulder of the can, and is washed out into the drip as the milk drippings from the bottom of the can run out.

661

Q. 33. And can you give us some kind of an idea about the quantities of milk which will be saved by the ordinary use of your machines?

A. Ordinarily, in my own experience as superintendent of the Borden plant, we saved one can of milk to every 200 dumped. I have also seen this machine save in condensed milk plants, as much as $40.00 worth of milk in a single day—day's receipts. Probably the receipts in this instance would amount close to 150,000 pounds and the drip milk was figured on the same price at which this milk was bought.

662

Q. 34. You have stated that these machines are manufactured under the Blair patent. Are they also manufactured under other patents, and if so, about how many?

A. Offhand, I would say close to 40. Some that have recently been issued do not appear on the name-plate I have here.

Q. 35. What is the custom of your company in regard to name-plates on these machines?

663

A. No machine ever leaves our factory that does not carry our name-plate.

Q. 36. I hand you a brass plate marked "Plaintiff's Exhibit No. 10" and ask you to state, if you know, what that is.

A. That is a plate used by our company, and the serial number is 302.

Q. 37. About when was that name-plate Exhibit No. 10 used by the company?

A. In the early stages of our manufacture. The plates are used consecutively in reference to the

664 Harry D. Lathrop

serial number. I could not tell exactly when that plate was used without looking up numbers.

Q. 38. Have you with you a sample of the name-plate as is now being used on these machines?

A. Yes, sir.

By Mr. Richards: The sample name-plate produced by the witness is offered in evidence and marked "Plaintiff's Exhibit No. 10-a".

665 Q. 39. I note that this Exhibit 10-a bears what purports to be a machine serial number 824. Please explain what that means.

A. These name-plates are bought with serial numbers running consecutively, and the last name-plate taken out would be the highest number. This is done for identification purposes, so we will know what type and what style of machine was manufactured by that number.

Q. 40. And I presume that when you sell a mach-
666 ine you keep a record of the serial number and the customer to whom sold?

A. Records are always kept of the serial number of the machine and to whom sold, if possible.

Q. 41. Now please state what if any, royalty arrangement there is between you and the Lathrop-Paulson Company in regard to the use of the Blair patent on these machines?

By Mr. Staples: I will repeat my objections because it is a different line than we had before. It is incompetent, immaterial and irrevelant.

A. Our minute books will show that the Lathrop-Paulson Company take care of all new patents and all litigation that may come up in connection with patents or the use of patents. In other words, royalty is determined by the money that is expended in the protection or having these patents issued.

Q. 42. And am I to understand from that, that no cash is paid you by the company as a royalty for the use of this Blair patent. Is that correct?

A. That is correct. 668

Q. 43. Who owns the majority of the stock in the Lathrop-Paulson Company?

A. Harry D. Lathrop.

Q. 44. Yourself?

A. Yes, sir.

Q. 45. Are you the same Harry D. Lathrop who was plaintiff in the case in the United States District Court for the Northern District of Illinois, Eastern Division, entitled "Harry D. Lathrop, Plaintiff, v. Davis-Watkins-Dairymens' Manufacturing Company, Defendant, In Equity No. 1166"? 669

By Mr. Staples: This is objected to as being another patent cause that has not come up before in this evidence, of which I am not familiar, and I will object to it as incompetent, immaterial and irrelevant and having no possible bearing on this case, and secondary evidence.

A. Yes.

By Mr. Staples: Is that the one a Con-

670 sent Decree was issued in Mr. Potts?

By Mr. Potts: Yes.

By Mr. Richards: A certified copy of the Decree in said suit in Equity No. 1166, is offered in evidence and marked "Plaintiff's Exhibit No. 3".

Q. 46. What connection, if any, has the Davis-Watkins-Dairymens' Manufacturing Company

671 with the Blair patent.

By Mr. Staples: Same objections.

A. I don't know that they have any connection.

By Mr. Staples: And calling for expert opinion on patent matter of which record would be the best evidence.

Witness (continuing) except royalty of license they may have to build under this patent.

Q. 47. Well, how about it? Have they a license under the Blair patent or haven't they?

A. Not to my knowledge.

672 Q. 48. To refresh your recollection, wasn't there an exchange of licenses between you and the Davis-Watkins-Dairymens' Manufacturing Company as a settlement of that litigation?

A. At the present time there isn't any Davis-Watkins-Company. My recollection is that they might possibly have had a license at one time.

ADJOURNED UNTIL 2:00 o' clock

2:00 o'clock MET PURSUANT TO ADJOURNMENT PRESENT AS BEFORE

673

Q. 49. Did you ever have any litigation over the Hood patents?

A. Yes.

By Mr. Staples: Same objections on this new line.

Q. 50. In what litigations, do you recall that the Hood patents were involved?

A. Supplee-Wills-Jones, I think it is Philadelphia.

Q. 51. How about a suit at Boston. Was there a suit at Boston? Charles Hood Patents?

674

A. Yes.

Q. 52. Well, was there a Boston suit.

By Mr. Staples: I repeat all the motions and objections on this line.

Q. 53. To refresh your recollection, was there a suit instituted by you on the Blair patent against Charles H. Hood?

A. Yes.

Q. 54. Now what was done with reference to that suit at Boston by you against Charles H. Hood, the suit at Philadelphia against Supplee-Wills-Jones, and the Davis-Watkins-Dairymens' Manufacturing Company suit at Chicago?

675

A. It was finally settled by an exchange of patents.

Q. 55. Well was it an exchange of patents or licenses under patents?

A. Well we gave a license and they also gave a license.

Q. 56. I hand you a document marked for iden-

676 Harry D. Lathrop

tification, "Plaintiff's Exhibit No. 2-d", and ask you to state, if you know, what that is, and while you are considering that, I will also ask you to consider the document marked for identification, "Plaintiff's Exhibit No. 2-e".

A. This is a license given to one of the Dairymens' Machinery Watkins Company so that they could manufacture under the Blair patent.

Q. 57. Who was that given by?

677 A. Lathrop-Paulson Company and H. D. Lathrop.

Q. 58. That is by yourself, is it not?

A. Yes. This is given by H. D. Lathrop.

By Mr. Richards: The document in question is offered in evidence as "Plaintiff's Exhibit No. 2-d" and is in words and figures as follows:

"NON-EXCLUSIVE LICENSE

678 WHEREAS, James R. Blair, of the City of Boston, in the County of Suffolk and State of Massachusetts, invented certain new and useful improvements in CAN WASHING MACHINES, for which he was granted Letters Patent of the United States No. 880,713, dated March 3, 1908, on CAN WASHING MACHINES; and

WHEREAS, Harry D. Lathrop, of the City of Chicago, County of Cook and State of Illinois, is now the owner of said Letters Patent No. 880,713, dated March 3, 1908, on CAN WASHING MACHINES; and

Harry D. Lathrop 679

WHEREAS, Lathrop-Paulson Co., a corporation duly incorporated and existing under the laws of the State of Illinois, and having a place of business at Chicago, in the County of Cook and State of Illinois, is a licensee under said Letters Patent No. 880,713, dated March 3, 1908, on CAN WASHING MACHINES; and

WHEREAS, Charles H. Hood, of the City of Somerville in the County of Middlesex and State of Massachusetts, and Davis-Watkins-Dairymens' 680
Manufacturing Company, a corporation incorporated and existing under and by virtue of the laws of the State of Delaware, having a place of business at North Chicago, in the County of Lake and State of Illinois, are desirous of acquiring a license under said Letters Patent No. 880,713, dated March 3, 1908, to manufacture, use and sell the invention covered thereby, throughout the United States;

NOW THEREFORE, be it known that in consideration of One ($1.00) Dollar to each in hand 681
paid, and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said Harry D. Lathrop and the said Lathrop-Paulson Co., do hereby license and empower the said Charles H. Hood and the said Davis-Watkins-Dairymens' Manufacturing Company to manufacture, sell and use the improvements in CAN WASHING MACHINES covered by United States Letters Patent No. 880,713, dated March 3, 1908, during the life of said Letters Patent, throughout the United States and the

682 Harry D. Lathrop

territories thereof, and do hereby release the said licensees and their customers from all liability for past infringements of said Letters Patent. This license is non-assignable and non-transferable.

This license is granted upon the express condition, and it is made an essential part hereof, that the licensees shall plainly mark, on all machines manufactured and sold by them, the words and
683 figures as follows:—

"Patented March 3, 1908, No. 880,713"

and that the manufacture or sale of any of said machines without being so marked shall constitute an infringement of said Letters Patent.

IN WITNESS WHEREOF I, the said Harry D. Lathrop have hereunto set my hand and seal at the City of Chicago, in the County of Cook and State of Illinois, this 18th day of October, A. D. 1919, and the Lathrop-Paulson Co., has caused its name to be attached hereto and signed by its
684 President, and attested by its Secretary and caused its corporate seal to be attached hereto, all of which acts have been duly authorized by the Board of Directors of the said Lathrop-Paulson Co., at the City of Chicago, in the County of Cook and State of Illinois, this 18th day of October, A. D. 1919.

HARRY D. LATHROP (SEAL)
LATHROP-PAULSON CO.
By
HARRY D. LATHROP
President

Attest:—
MARGARET V. LATHROP
Secretary Lathrop-Paulson Co.
In presence of:
JOSHUA R. H. POTTS
ROSE K. TRIB

State of Illinois
County of Cook } ss

686 Personally appeared before me, a Notary Public within and for the County and State aforesaid, Harry D. Lathrop, who, after having the foregoing instrument read over and its contents fully explained to him, subscribed his name thereto and acknowledged the execution of said instrument as his own free and voluntary act, for the uses and purposes therein set forth;

Also personally appeared before me Harry D. Lathrop, President of the Lathrop-Paulson Co., a corporation, and after having the foregoing in- 687 strument read over and its contents fully explained to him, caused the name of said corporation to be attached thereto and signed by him as its President and attested by its Secretary, and its corporate seal attached thereto, and acknowledged all of said acts were authorized by the Board of Directors of said company.

IN WITNESS WHEREOF I hereunto set my hand and affix my official seal at the City of Chicago, in the County of Cook and State of Illinois, this 18th day of October, A. D. 1919.

688 Harry D. Lathrop

ROSE K. TRIB

L. S. *Notary Public.*"

By Mr. Staples: What is this 2-d?

By Mr. Potts: It is a license from Lathrop to Davis-Watkins-Dairymen's Manufacturing Company.

Witness (continuing): This is a license given by Charles H. Hood and the Davis-
689 Watkins'-Dairymen's Manufacturing Company to Harry D. Lathrop and the Lathrop-Paulson Company, to manufacture under a number of patents that are listed here in this.

By Mr. Richards: The document last identified by the witness is offered in evidence as "Plaintiff's Exhibit No. 2-e" and is in words and figures as follows, to wit:

"NON-EXCLUSIVE LICENSE

690

Whereas, Charles H. Hood, of Somerville, in the County of Middlesex and State of Massachusetts, invented certain new and useful improvements in APPARATUS FOR CLEANING, STERILIZING AND DRYING MILK CANS, for which he was granted Letters Patent of the United States No. 864,131, dated August 20, 1907; APPARATUS FOR CLEANING, STERILIZING AND DRYING MILK CANS, No. 864,132, dated August 20, 1907; APPARATUS FOR CLEANING, STERILIZING AND DRYING

MILK CANS, No. 864,133, dated August 20, 1907; APPARATUS FOR CLEANSING, STERILIZING AND DRYING MILK CAN COVERS, No. 934,404, dated September 14, 1909; and CAN CLEANING APPARATUS, No. 949,121, dated February 15, 1910; and

WHEREAS, said Charles H. Hood, of Somerville, in the County of Middlesex and State of Massachusetts, is now the owner of said Letters Patents Nos. 864,131, 864,132, 864,133, 934,404 and 949,121; and 692

Whereas, Davis-Watkins-Dairymen's Manufacturing Company, a corporation incorporated and existing under and by virtue of the laws of the State of Delaware, having a place of business at North Chicago, in the County of Lake and State of Illinois, is a licensee under said Letters Patents Nos. 864,131; 864,132; 864,133; 934,404 and 949,-121; and

Whereas, Harry D. Lathrop, of the City of Chicago, in the County of Cook and State of Illinois, and Lathrop-Paulson Co., a corporation incorporated and existing under and by virtue of the laws of the State of Illinois, and having a place of business at Chicago, in the County of Cook and State of Illinois, are desirous of acquiring a license under said Letters Patents Nos. 864,131; 864,132; 864,133; 934,404 and 949,121, to manufacture, use and sell the inventions covered thereby throughout the United States; 693

Now Therefore, be it known that for and in consideration of the sum of One ($1.00) Dollar to each

694 Harry D. Lathrop

in hand paid, and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the said Charles H. Hood and the said Davis-Watkins-Dairymen's Manufacturing Compaay do hereby license and empower the said Harry D. Lathrop and the said Lathrop-Paulson Co. to manufacture, sell and use the improvements in APPARATUS FOR CLEANING, DRYING AND STERILIZING MILK CANS, covered by United States Letters Patent No. 864,131, dated
695 August 20, 1907; APPARATUS FOR CLEANING, STERILIZING AND DRYING MILK CANS, covered by United States Letters Patent No. 864,132, dated August 20, 1907; APPARATUS FOR CLEANING, STERILIZING AND DRYING MILK CANS, covered by United States Letters Patent No. 864,133, dated August 20, 1907; APPARATUS FOR CLEANSING, STERILIZING AND DRYING MILK CAN COVERS, covered by United States Letters Patent No. 934,404, dated September 14, 1909; and CAN CLEANING
696 APPARATUS, covered by United States Letters Patent No. 949,121, dated February 15, 1910, during the life of said Letters Patents, throughout the United States and the territories thereof, and do hereby release the said licensees and their customers from all liability for past infringements of said Letters Patents; this license is non-assignable and non-transferable.

This license is granted upon the express condition and it is made an essential part hereof that the licensees shall plainly mark, on all machines

manufactured and sold by them, the words and figures as follows:— 697

Patented August 20, 1907, No. 864,131
Patented August 20, 1907, No. 864,132
Patented August 20, 1907, No. 864,133
Patented Sept. 14, 1909, No. 934,404
Patented Feb. 15, 1910, No. 949,121

and that the manufacture or sale of any of said machines without being so marked shall constitute an infringement of said Letters Patents.

In Witness Whereof I, the said Charles H. Hood 698
have hereunto set my hand and seal, at the City of Boston, in the County of Suffolk and State of Massachusetts, this 19th day of November, A. D. 1919, and the Davis-Watkins-Dairymen's Manufacturing Company has caused its name to be attached hereto, and signed by its President and attested by its Secretary, and caused its corporate seal to be attached hereto, all of which acts have been duly authorized by the Board of Directors of the said Davis-Watkins-Dairymen's Manufacturing Company, at Chicago in the County of Cook 699
and State of Illinois, this 21st day of November, A. D. 1919.

CHARLES H. HOOD (Seal)

In presence of:

JAMES R. HODDER
HAROLD J. CLARK.

DAVIS-WATKINS-DAIRYMEN'S
MANUFACTURING COMPANY.
By W. C. DAVIS, (Seal)
President.

700 Harry D. Lathrop

Attest:—
C. C. COMMONS,
Secretary Davis-Watkins-Dairymen's
Manufacturing Company.
In presence of:
E. E. MORGAN
F. H. WALSH

State of Massachusetts, }
County of Suffolk. } ss.

701 Personally appeared before me, a Notary Public within and for the County and State aforesaid, Charles H. Hood, who, after having the foregoing instrument read over and its contents fully explained to him, subscribed his name thereto and acknowledged the execution of said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

In Witness Whereof I hereunto set my hand and affix my official seal at Boston, in the County of Suffolk and State of Massachusetts this 19th
702 day of November A. D. 1919.

JAMES R. HODDER,
Notary Public.

State of Illinois, }
County of Cook. } ss:

Personally appeared before me, a Notary Public within and for the County and State aforesaid, W. C. Davis, President of the Davis-Watkins-Dairymen's Manufacturing Company, a Corporation, who, after having the foregoing instrument

703

read over and its contents fully explained to him, caused the name of said corporation to be attached thereto and signed by him as its President, and attested by its Secretary, and its corporate seal attached thereto, and acknowledged all of said acts were authoried by the Board of Directors of said Company.

In Witness Whereof I hereunto set my hand and affix my official seal at Chicago, in the County of Cook and State of Illinois, this 21st day of November, A. D. 1919.

704

RICHARD S. TUTHILL,
Notary Public.

L.S.

Q. 59. Now what relation have those two documents to these litigations at Boston, Philadelphia and Chicago, that we have just been talking about?

A. They are settlements.

Q. 60. As I understand you then, these are the documents by means of which those three litigations were settled?

705

A. That is right, including the entry of the Consent Decree in the Chicago case.

Q. 61. Previous to this litigation and this settlement that you have just discused, had there been any negotiations between you and Mr. Hood whose patents are involved in that settlement?

A. Yes, sir.

Q. 62. Just state briefly the nature of those negotiations.

706

A. We offered them $50,000.00 for the use of the patents during their life, and were led to believe they would take this. The contract was written up and they then used this as a club over someone else, and sold them to someone else.

By Mr. Staples: Mr. Mitchell suggests that this being another line on Mr. Hood, it should be objected to, and the motions to strike out, object, etcetera, may be repeated.

707

By Mr. Potts: That is all right. I understand that is in the record.

By Mr. Mitchell: On the further ground that the negotiations are merged in the written settlement which are part of the record now.

Q. 63. Then as I understand you and the situation which you have described, the license under the Blair patent was given in exchange for a license for which you had previously offered $50,-

708 000.00. Is that corect?

A. Yes, sir.

By Mr. Richards: Request is also made to the court that plaintiff be permitted to withdraw these original license agreements just introduced in evidence, and substitute copies therefor.

Q. 64. How long have you been connected with the milk industry in the United States?

A. The milk industry itself about sixteen years or more; raised on a farm of course; interested in that matter all my life.

709

Q. 65. Just briefly outline your business experience in the milk industry.

A. My first position with the milk industry as a manufacturing industry, was with the Borden people at Woodstock, Illinois. I remained with the Borden people until about 1915; probably a period of three years or something like that.

Q. 66. And since that time I understand you have been connected with the Lathrop-Paulson Company. Is that right?

710

A. Yes, sir.

Q. 67. As a result of this experience, how familiar are you with the various machines that are being manufactured and have been manufacturing during this period by the various manufacturers in the country, and particularly can washing machinery?

A. Why it is my business and I make it my business to look into all of them, and I am familiar with them—practically every kind.

Q. 68. Specifically, are you familiar with the character of machines now being manufactured and which have been manufactured during that period by the Rice & Adams Corporation of Buffalo, New York, the defendant herein?

711

A. Quite familiar with them.

Q. 69. Now did you ever see a milk can washing machine in operation in the plant of the Bowman Dairy Company in Chicago?

A. Yes, sir.

Q. 70. When was that?

A. April 28, 1921.

712 Harry D. Lathrop

Q. 71. Where was that plant located?

A. 6600 block I believe, on Wentworth Avenue South.

Q. 72. And in Chicago?

A. Yes.

Q. 73. And will you describe briefly the machine you saw in use there on that occasion?

A. It was a Rice & Adams straight-away can washer, approximately 27 feet long. The forward end was a drip saving arrangement from which
713 the cans passed into the machine, received the various washing, sterilizing and drying treatments, from which they emerged at the other end of the machine. It was a machine driven by pumps, motors and oscillating device that moved the cans forward a step at a time, allowing them to remain a certain period over each operation.

Q. 74. Did that machine have anything on it to indicate its source of manufacture?

A. Rice & Adams Corporation name-plate, Buf-
714 falo, New York.

Q. 75. And what can you say as to whether or not you recogniezd that machine as the manufacture of any particular corporation?

A. I have seen Rice & Adams machines all over the country, seen them exhibited at dairy shows, and know the machine whenever I see it.

Q. 76. And what was this machine?

A. This was a can washer

Q. 77. Of whose manufacture?

A. It was the can washer of the Rice & Adams manufacture.

715

Q. 78. The Rice & Adams Corporation, the defendant herein? Is that right?

A. Yes, sir.

Q. 79. I hand you Plaintiff's Exhibits 5 and 6, and ask you to state whether or not they correctly or substantially correctly represent the machine which you there saw in use on that occasion.

Witness: Is this a different number?

By Mr. Potts: No, that is 5 you have in your hand. This one is 6, and the different cuts are numbered.

716

A. These appear to be very similar to the machine. They may be known as types, but in general they are the same.

Q. 80. And what was the condition of that machine that you saw there on that day, as to its operativeness?

A. It was in operation.

Q. 81. And what, if anything, did you observe as to milk being collected thereby?

717

A. We went there for that purpose. We went into the plant and asked for the superintendent, and was introduced to Mr. Gaffney, who said he was superintendent. The entire rest of our visit there was spent in the receiving room about this machine that was operating. They were washing cans at the time, and the drip saver was being used. There was about a half can of milk in a 10-gallon can under the drip saver, with more running in as cans were put through the machine.

Q. 82. Was anything said as to the amount of

718 Harry D. Lathrop

milk which was saved by the use of this machine, and if so, what?

A. Mr. Gaffney said they saved approximately 50 pounds a day.

Q. 83. About how large was that machine which you saw there in operation on that day?

By Mr. Staples: Just to save your time, he has already given that.

A. It was about 27 feet long.

719 Q. 84. You stated, I believe, that you were the plaintiff in the suit against the Bowman Dairy Company in the United States District Court here, did you not?

A. Yes, sir.

Q. 85. Were you familiar enough with that litigation to know the machine about which complaint was made in that litigation?

A. Yes, sir.

Q. 86. What was the machine?

A. The Rice & Adams.

720 *By Mr. Staples*: All of the objections go in.

Witness (continuing A. to Q. 86): machine at the Bowman Dairy plant.

Q. 87. As I understand you then, it was this very machine that you have just described as seeing in operation in the Bowman Dairy Company plant on that occasion? Is that right?

A. Yes, sir.

Q. 88. Did you testify in that suit against the Bowman Dairy Company?

A. Yes, sir.

Q. 89. And in that testimony did you describe

721 and identify the machine about which complaint was made?

By Mr. Staples: Objected to as incompetent, immaterial.

By Mr. Potts: Those objections are all in.

By Mr. Staples: That's true.

A. Yes, sir.

Q. 90. What was the machine about which you testified in that case, and of which you made complaint in that case?

722 A It was a Rice & Adams can washer.

Q. 91. Well which Rice & Adams can washer?

A. The one in the Bowman plant on Wentworth Avenue, that had the drip saver on.

Q. 92. And the same identical machine, as I understand you, about which you are also testifying today?

A. Yes, sir.

Cross-Examination by Mr. Staples:

723 XQ. 1. Mr. Lathrop, you have given substantially the same description of the testimony today about the machine you saw at the Bowman Dairy, as you did in any previous testimonies that you have given about it, have you not?

A. As near as I can remember.

XQ. 2. At any rate, you have as fully as you could at the present time, described the features that you have seen in the machine at the Bowman Dairy?

A. I possibly could have gone into detail a little more.

724 Harry D. Lathrop

XQ. 3. But essentially?

A. Yes.

XQ. 4. As I understand it, this law suit now pending, is one brought by you as an individual person, is it not?

A. Yes, sir.

XQ. 5. But all of the expenses of it are being paid by the Lathrop-Paulson Company?

A. Yes, sir.

725 XQ. 6. And you are the individual owner of all the stock of the Lathrop-Paulson Company?

A. Yes, sir.

XQ. 7. Prior to your acquiring the Blair patent, I gathered from all of the testimony, that either the Lathrop-Paulson Company or yourself individually, manufactured washing machines with a drip saver of some kind. Is that true?

A. Yes, sir.

XQ. 8. That you had previously manufactured such washing machines with drip savers with a

726 variety of mechanisms, which you and Mr. Paulson have invented or patented or bought?

A. There was no variety so far as the drip saver was concerned, if that is what you mean.

XQ. 9. No, I mean the mechanism of your washing machine.

A. Yes, sir.

XQ. 10. The machines you actually did manufacture were changing in their mechanical construction and being given by you serial numbers from year to year, under which these new and changing forms were made. Is that true?

727

A. Yes, sir.

XQ. 11. Now the principal thing that we have described in the machines—the Bowman Dairy we talked about in this evidence—I understand has been a drip saving—milk saving device, and a mechanical means of moving the cans through a washing machine adapted for washing cans. Is that true?

A. That all came into it, yes.

728

XQ. 12. Before you bought the Blair patent, you had means which you had developed or invented, or at least used in the Lathrop-Paulson machines, also for moving the cans through your washing machines?

A. Yes, sir.

XQ. 13. And you have used different means of moving the cans through your washing machines, have you not?

A. Slightly.

729

XQ. 14. Name one or two of the different means that you have used for moving the cans through the machine.

A. Well, we have used dogs that work on the bottom and work on the neck of the can. That would be a different way.

XQ. 15. And have you also used a continuous endless carrier with the cans inverted thereon, going through the machine?

A. We have a continuous carrier on a circular machine. It is not a chain, however.

XQ. 16. Well, a circular carrier of some kind?

A. Yes.

730

XQ. 17. And have you used such circular continuous carrier with a drip saving device in front of it?

A. Not until after the time of this suit—that is only more or less recent. At that time we were not.

XQ. 18. You understood that the Blair patent provided for a continuous carrier, didn't you?

A. No, I didn't pay much attention to the carrier on the Blair patent.

731 XQ. 19. As a matter of fact, you looked to the Blair patent entirely on account of a saving device of any kind?

A. We bought it to save the drippings.

XQ. 20. Your contention now is, is it not, that any milk saving device—drip pan—is covered by the Blair patent?

By Mr. Richards: Objected to as not proper cross-examination. Further for the reason that it does not as yet appear what if any, the contentions of the plaintiff are, and that the

732 witness is not a patent lawyer, and therefore uable to predict what contentions will be made in his behalf at the final hearing herein.

XQ. 21. I am merely asking you as the plaintiff, what you understand about it. You understood that this suit was brought on the Blair patent, didn't you? Do you understand that it is also brought for patents other than the Blair patent?

A. What suit do you refer to?

XQ. 22. This one right here now.

A. I believe the Blair patent is the main issue

733

in this—let me understand—what suit do you mean when you say 'this one''?

XQ. 23. This one now pending. Do you understand that it has anything to do with any other patents than the Blair patent?

By Mr. Potts: I object to this line of examination of the witness. The suit itself shows what patent it is based upon, the proceedings in the case show the witness is not a patent lawyer, is not versed in these technical matters, and he was not examined on these questions in the direct examination, and it is entirely improper.

734

A. I really don't know.

XQ. 24. Didn't your attorney on direct examination ask you how many patents you had upon Plaintiff's Exhibit No. 10 and Plaintiff's Exhibit No. 10-a, and in answer thereto, didn't you count over the numbers, and after meditation, say "about 40 patents."

A. That is on the present name-plate and what are not issued.

735

XQ. 25. Are the plaintiff's Exhibits 10 and 10-a something that has happened since 1921?

A. Some of them have happened since that time, I believe. The dates will tell you.

XQ. 26. You would be sure without referring to it, that either one of them were actually used by you prior to 1922?

A. Either one of them, oh yes. Yes, sir.

XQ. 27. Were both of them used before 1922?

A. We never did use but one at a time.

736 Harry D. Lathrop

XQ. 28. Did you use Plaintiff's Exhibit No. 10-a before 1922?

By Mr. Potts: The witness may examine the exhibit, if he wishes.

A. These were not in series, and I can't tell you how far back they go.

XQ. 29. Can you tell me if Plaintiff's Exhibit 10-a was even in existence in 1922?

A. Yes, I am quite sure.

737 XQ. 30. It was in 1922?

A. Quite sure, but it might not have been put on machines. We never use a new patent plate until.

XQ 31. Before it is issued.

A. No; not before it is issued.

XQ. 32. I notice here that there appears to be half of these dates after February, 1923, with the serial number after them.

A. I wouldn't think so.

XQ. 33. Will you look at Plaintiff's Exhibit No.

738 10-a, the last half and see if about half of them are not dated in the year 1923?

A. No, not half.

XQ. 34. Well, how many?

A. For 1923, I see about 6—6 out of about 36.

XQ. 35. Now, Mr. Lathrop, since your attention has been called specifically to Plaintiff's Exhibit 10-a, and you see therein that the patents were issued subsequent to February, 1923, would you wish to swear that that plate that you hold in your hand, Exhibit 10-a was even in existence in the year 1922?

739

A. This plate could not have been in existence in 1922.

XQ. 36. Can you tell by referring to Planitiff's Exhibit 10-a, whether there are any 'patents thereon indicated, which were the inventions of either yourself or Mr. Paulson?

A. Yes, sir.

XQ. 37. Are there?

A. Yes.

XQ. 38. Are there indicated thereon any patents the inventions made by you and

740

A. Yes, sir. That is right.

XQ. 39. You have been describing, have you not, the machines made by the Lathrop-Paulson Company, just as they were made, regardless of any of the patents. That is, you described your machine just as it was in your catalogue?

A. Surely.

XQ. 40. By the way, in this Plaintiff's Exhibit 1, is there some page in that which describes the mechanism for moving the cans through the washer in the Lathrop-Paulson washing machine? Well, I wanted to see—what is the reference—somebody refer me to the page.

741

Witness: Well if No. 7 will tell you something. There aren't any pages on this book.

By Mr. Staples: Let me just look at that a moment. All I want is just a description of precisely the mechanical mechanism for moving the cans through the washing machine or a clear cut picture showing actually how the Lathrop-Paulson machine, in this Exhibit 1,

742 Harry D. Lathrop

did move the cans through the washing machine. Perhaps it isn't in the book.

XQ. 41. Is there, as a matter of fact, a description of the mechanism for moving the cans through the Lathrop-Paulson can washer, in Plaintiff's Exhibit No. 1?

A. There are several of them.

XQ. 42. Just call my attention to them. That is all I want to know—just the mechanical mechanism for moving the cans.

743 A. Feature No. 2 will tell you something about the mechanism. There are no pages—features. It is near the front part. They don't however, go into detail.

XQ. 43. I fear you have a little different book. They are not just alike. Just read

A. "Every can that passes through the machine is washed in soda solution; rinsed in fresh, clean scalding water, and quickly dried." You want to know just how it is done?

744 XQ. 44. Yes. I want to get the reading of how it is done.

A. That is a part of the operation.

XQ. 45. No, that isn't what I want. I want to get just how the cans

A. You had better get that out of another book.

XQ. 46. You don't think it clearly shows how the cans are moved?

A. The book is not for that purpose.

XQ. 47. It does not show it as a matter of fact?

A No. No. 6 tells you something about it. It says there is a turbine for drying the fan.

745

XQ. 48. Just glance through that catalogue, Mr. Lathrop, and when you come to any words that describe the mechanism used by the Lathrop-Paulson Company for moving the cans through the wash machine

A. "The Pyle national turbine operates at 3600 revolutions per minute, while the speed of the drive wheel runs only 15 revolutions per minute. This feature with the roller bearings, guarantees a free, steady motion and adds materially to the life of the machine."

746

XQ. 49. Does that sentence which you have just quoted from Plaintiff's Exhibit 1, decribe accurately, the mechanism of the Lathrop-Paulson Company in moving the cans—the inverted milk cans—through the can washer?

A. Is that a question?

XQ. 50. Yes.

A. Not accurately—only partially.

XQ. 51. Is there some more accurate description of that mechanism of the Lathrop-Paulson Company?

747

A. There is a little of it all through the book—not a great deal.

XQ. 52. If you find anything more accurate, just call my attention to it.

A. This book is more to tell you what we do than how we do it. It is not a book explaining the manner in which these mechanical devices function.

XQ. 53. Well then, we will leave that. In your oral testimony, you defined this moving device

748

mechanism in the Bowman Dairy, with the word I think "oscillating — by an oscillating movement." Was it an oscillating movement that you saw at the Bowman Dairy?

A. It is an intermittent forward and back movement. I guess that is the right word. I think that is what it means.

XQ. 54. Now that oscillating movement—you used that word oscillating to distinguish it from
749 a continuous movement?

A. Yes, sir.

XQ. 55. And an oscillating movement is just opposite to a continuous movement, is it not?

A. So far as the movement is concerned. I wouldn't say it was opposite, but different.

XQ. 56. Did you ever manufacture, or the Lathrop-Paulson Company, a milk can washer with a pan—drip pan, to save milk, in which the means of moving the cans through the washer, was by an
750 oscillating movement?

A. What do you mean by "oscillating"?

XQ. 67. The word you have used.

A. If the word is used as I understand it, it is an intermittent, forward and back movement.

XQ. 68. I think that would be it. Now, did you ever manufacture a device in connection with this drip saver, with the oscillating movement?

A. It is always in connection with it.

XQ. 69. Then you have manufactured such a machine?

A. Yes.

751

XQ. 70. Is it possible you are manufacturing such machines now?

A. Yes.

XQ. 71. How long have you been manufacturing oscillating machines?

A. Ever since we started building machines.

XQ. 72. I understood you to say that you did also, about the time you got the Blair patent, manufacture a continuous carrier.

A. No, sir, you are mistaken.

752

XQ. 73. Did you ever manufacture a mechanism on a washing machine that was a continuous carrier?

A. I explained to you that in recent years we build a circular machine—that is circular; not necessarily continuous, however. It is intermittent.

XQ. 74. Did you ever manufacture a machine —milk washer— with a continuous carrier on which the inverted cans rested?

A. The round machines that we are making today, might come under that head.

753

XQ. 75 Did you ever manufacture can washers using a continuous chain?

A. Bottle washers.

XQ. 76. With a milk saving device in connection with it?

A. Not necessarily.

XQ. 77. Well, have you ever?

A. They have a drip pan.

XQ. 78. Well that is what I mean. They have a drip pan to save milk. As a matter of fact, the

754 only purpose of the drip pan is to save the milk that drops down through gravity?

A. I wouldn't say so. You might want it there for other purposes.

XQ. 79. It is for the savings?

A. Yes, that is what it is for.

XQ. 80. And if there is any milk dropping out of the bottles, that is what you use it for?

A. Well, it wouldn't be practical.

755 XQ. 81. When it comes to the practical side of it, the amount of savings from a can depends upon the amount left in the can before they dump it over?

A. Certainly.

XQ. 82. Now this Borden plant buys milk from farmers?

A. Yes, sir.

XQ. 83. And you pay the farmers for the amount of milk you weigh out before you put it in the tank?

756 A. Which Borden plant do you refer to?

XQ. 84. The one you referred to—the one you worked in. How do you arrive at the amount of money you pay the farmer?

A. Their milk is weighed in the country.

XQ. 85. The savings in milk that goes into this milk saver or drip pan, isn't bottled up in bottles for someone by milk buyers, is it?

A. It is in the Borden plant in Chicago; always was.

XQ. 86. Regardless of whether it dropped down into this drip pan or not?

757

A. Caught in this drip pan and bottled the same.

XQ. 87. Is that being used by consumers in Chicago now?

A. Yes, sir, if they are using the machine now. I am not at the plant now. When I was there they did.

XQ. 88. I understood you to say that it wasn't used?

A. It was used in butter or cheese or something of that kind, in condensed milk.

758

By Mr. Potts: The witness said in some states.

A. I said in some states, but here in Chicago it was bottled.

XQ. 89. You would expect there would be some criticism as to such use of it?

A. The bottled was here.

XQ. 90. You haven't seen it — that is, that it comes from the drippings of this pan?

A. It isn't necessary to test. It is better milk than the milk you buy.

759

XQ. 91. How has this milk been improved since it came from the cow, by this savings device?

A. It has taken on more cream than it naturally had in the first place. It is a richer milk than the milk you buy. That is why it is better.

XQ. 92. To the extent that it is

A. All butter fat.

XQ. 93. The butter fat answers it?

A. Yes. But to the extent that it has been handled and has been dumped into mechanical pans and things of that kind, it has been subjected

760 to contaminations no more than other milk. It is all handled in some manner.

XQ. 94. The more it is handled, it is contaminated?

A. No, I didn't say so. I wouldn't say so.

XQ. 95. Do you know of any menhanical process except of pasteurization, that improves the condition—the sanitary condition of the milk—its freedom from bacteria?

761 A. Yes, sir, condensing.

XQ. 96. I mean without condensing or putting in the powdered milk?

A. You didn't say that.

XQ. 97. It is your judgment that condensed milk is better than raw milk pasteurized?

A. Raw pasteurized?

XQ. 98. Than raw milk.

A. It depends upon the milk entirely. You can have raw milk that would be better than pasteurized milk, if it is handled properly, I presume.

762 XQ. 99. In your opinion, was the 50 pounds of milk that the Bowman Dairy—which went through the drain—milk-drain—in a purer, more sanitary condition than the milk in the can which didn't go through the process?

A. No, sir.

XQ. 100. Isn't it your opinion that the milk had a higher bacterioligical count?

A. I don't know any reason why it should, if it is handled properly.

XQ. 101. Now, am I correct in gathering from your testimony in reference to various other pat-

ent litigations that you have had in reference to milk saving devices or can washers thereon—this present suit—that you had certain agreements with different parties prior to the exhibits your counsel has shown you, 2-d and 2-e—made certain agreements with people, leading up to them?

A. The agreements must be prior to some of these things.

XQ. 102. You did mention $50,000.00. Do either one of these exhibits, Plaintiff's Exhibits 2-d and 2-e, refer to $50,000.00? 764

A. I wouldn't know without reading them all through. I don't think they do.

XQ. 103. Your catalogue of can washing efficiency—Plaintiff's Exhibit 1-a—embodies all of the actual changes in machines covered by all of the patents to which you have referred, it consisting of about 40 patents, does it not?

A. I wouldn't say that it did in detail.

XQ. 104. Well is that your understanding?

A. It doesn't in detail. That book treats on ten 765 features that we believe are the most important, and it goes into those features quite in detail. There are other features protected by patents that are not even mentioned there.

XQ. 105. Perhaps you have already answered it. I was trying to see whether in these two catalogues, all of the developments and descriptions of the mechanisms of the machines of the Lathrop-Paulson Company, as covered by all of your patents—as many as there may be—are embodied.

A. I don't think they are all in there. They are

not all mentioned. There may be patents that don't affect the machine that are not mentioned there at all. That isn't a construction book. It is not so much on construction as it is on what it will do.

XQ. 106. From these two books, Plaintiff's Exhibits 1 and 1-a, we can't get any accurate description of the patent features of any of your patents.

A. Yes, you can, many of them, but not all of them.

767 XQ. 107. Well now, is there some page on even that Plaintiff's Exhibit No. 1-a—this one here

Witness: Yes that is the one very recent—Feature No. 1.

Mr. Staples continuing XQ. 107: Is there any page on here which will set up and describe all of the mechanical features of your Blair patent?

By Mr. Potts: I wish to enter a most strenuous objection against the continuation of

768 examination of this kind. The witness has answered the same questions repeatedly, and it is apparent that this line of examination is repeated over and over simply for the purpose of increasing the record and expense of this litigation.

XQ. 108. If you will find just one page that has all of the features of the Blair patent and call my attention to it, I will stop.

A. You can look at that page No. 6, and see many of them. Whether they are all there, I couldn't say, but a good many features are on page 6.

769

By Mr. Staples: That is all I wanted to know so I could hear where they were.

Re-Direct Examination by Mr. Richards:

RDQ. 1. What is it that determines in your judgment, the quantity of milk that is retained in the cans when dumped, and thus possibly saved by this drip saver?

A. Usually governed, or you might say, nearly always governed, by the speed by which the cans 770
are dumped.

RDQ. 2. That is, it depends to a considerable extent on the man who dumps the cans? Is that correct?

A. Oh yes, it does.

RDQ. 3. And if he dumps them rapidly, there will be more milk retained than if he dumps them more slowly?

A. Yes, sir.

RDQ. 4. I presume also, that the matter of carelessness would figure into it to some extent? 771

A. Yes, it would.

RDQ. 5. How about temperature? Would that figure in?

A. That figures in a big way.

RDQ. 6. So that, if the temperature is low enough to freeze the milk or cream in a can, then it might figure largely?

A. Not necessarily to freeze it. If you chill it, it thickens, and the colder it is the more pronounced it is.

RDQ. 7. And this is particularly true, that is,

772 Harry D. Lathrop

the temperature aspect, of condensed milk, is it not?

A. Yes, sir.

RDQ. 8. Now when milk is pasteurized, when is this usually done with reference to the time of dumping?

A. After dumping always.

RDQ. 9. So that any milk which was collected in this drip saver and added to the milk which had previously been dumped, would be pasteurized along with the bulk of the milk, would it not?

773

A. Yes, sir.

RDQ. 10. You have stated, I believe, that the Davis-Watkins-Dairymen's Manufacturing Company took a license under the Blair patent and manufactured under the Blair patent. What kind of a machine did that company manufacture with reference to the character of the feed of the cans through the machine, if you know?

A. They manufactured a round machine, I be-

774 lieve, a straight-away. I know they did manufacture a round one.

RDQ. 11. And in these machines, how were the cans fed, intermittently or continuously?

A. Intermittently in some machines, possibly continuously—to move continuously in the round ones. Their machines have not been built for sometime, and I am not very familiar with them right now.

RDQ. 12. In these round machines, to clear up the situation somewhat, they usually have a revolving table affair, do they not?

775

A. Yes, sir. I think that is intermittent too.

RDQ. 13. Now, then, in this straight-away machine of the Davis-Watkins-Manufacturing Company, what kind of a movement was there?

A. That was a forward and back movement.

RDQ. 14. Well somewhat after the same fashion as employed in the Lathrop-Paulson machines and also in this Rice & Adams machine we are talking about?

A. Yes, sir.

776

RDQ. 15. Now, when you purchased, or the Lathrop-Paulson Company first purchased the Blair patent, you had previously been manufacturing a milk can washing machine, I believe you stated. Is that right?

A. Yes, sir.

RDQ. 16. About how long previously had you been manufacturing such a machine?

A. Must have been three or four years, I should judge—I am not positive.

RDQ. 17. And how extensive had that manufacture been up to that time?

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By Mr Staples: Get the date if you can.

A. Quite extensive.

RDQ. 18. Do you remember offhand, when you bought the Blair patent?

A. No, I don't.

By Mr. Richards to Mr. Staples: It is in the Assignment.

By Mr. Staples: Pardon me for the interruption—I just wanted to get it clear.

By Mr. Potts: The date was the 23rd of

778

May, 1917, that the Blair patent was purchased.

RDQ. 19. It appears from this Assignment which is in evidence, from Blair to Mr. Potts, who afterwards assigned it to your company, that the Blair Assignment was dated the 23rd day of May, 1917. Does this refresh your recollection in that regard?

A. Yes, sir.

779 RDQ. 20. Now, what can you say as to how long you had been manufacturing before that time?

A. From either 1914 or 1915 — two to three years.

RDQ. 21. And how extensive had that manufacture been?

A. The first year was $22,000.00 worth of business on machines sold, or from $150.00 up to about 400.00 or 500.00 the first year.

RDQ. 22. Where did you first make these machines?

780 A. At 15th and Rockwell streets, at the Chicago Machine & Washer Company.

RDQ. 23. At this time did you have a plant of your own?

A. No.

RDQ. 24. And how much has the extent of your manufacture increased since that time?

A. Oh, double a good many times, I would say.

RDQ. 25. And at the time you purchased the Blair patent, or your company purchased the Blair patent, how much did you know about the patent situation in regard to these machines?

781

A. Personally, very little.

RDQ. 26. Had anything transpired which caused you to investigate the patent situation?

A. Yes, sir.

RDQ. 27. What was that?

A. It was the dairy — the Charles Hood — through the Dairy Machine Company told us we were infringing on their patents.

RDQ. 28. And what patents was it?

A. Charles Hood patents.

782

RDQ. 29. And as I understand the purport of your testimony, that is what led you to make an investigation as to the patent situation, and up until that time you knew practically nothing of the patent situation?

A. Paid very little attention to it, except make applications.

RDQ. 30. So that, if the machine which you had been making up to that time, was an infringement on any then existing patent, you did not know it?

A. No, we did not.

783

RDQ. 31. Was the suit afterwards filed, with which you had been threatened?

A. Yes, sir.

RDQ. 32. What suit was that?

By Mr. Staples: Do you need to cover it any more?

By Mr. Richards: Well I want to make the situation clear.

A. The Supplee-Wills-Jones Machine Company of Philadelphia.

RDQ. 33. And I take it from that that the Sup-

784 plee-Wills-Jones Company was a customer of yours, and was being sued by Charles Hood for infringement on these patents on which you had been previously threatened. Is that right?

A. That is right.

Re-Cross-Examination by Mr. Staples:

RXQ. 1. Mr. Lathrop, all of these other patent matters—I understand there was about three of
785 them—that we have talked about here today, all of these patent law suits took place before either you or the Lathrop-Paulson Company acquired any interest in the Blair patent?

A. Some of them did.

By Mr. Potts: The record shows.

By Mr. Staples: That is why I asked.

RXQ. 2. They all took place beofre you bought the patent—the buying of the patent was the culminate settlement of these law suits?

786 A. Not all of them.

RXQ. 3. Which ones didn't you settle?

A. The first trouble we had in litigation, was the Supplee-Wills-Jones.

RXQ. 4. Did you settle that before 1917 or the summer of 1917?

A. It is a long time—the records ought to show.

RXQ. 5. Anyway, these patent difficulties, if not all of them, took place before you took any interest in the Blair patent?

A. Some of them.

RXQ. 6. And the one with reference to Mr. Hood certainly did?

A. Yes.

RXQ. 7. And who was your patent attorney in those proceedings?

A. Joshua Potts.

RXQ. 8. And he has been the attorney for the Lathrop-Paulson Company too?

A. Yes, sir.

RXQ. 9. And your only private patent attorney ever since, prior to your acquiring the Blair patents? 788

A. He has been the only attorney we have ever employed.

RXQ. 10. And he was your attorney when he acquired the patent himself?

A. Yes.

RXQ. 11. Now the mechanism moving the cans through the washing machine—there is an element of time, isn't there, between the cans being inverted over the drip savings device and its going into the washing machine where the cleaning media is? 789

A. I wouldn't say so.

RXQ. 12. The completeness with which the material milk comes out of the can into the pan or pot under it, depends to a certain extent on how long it remains standing there?

A. It takes a certain length of time.

RXQ. 13. And the more the increase of savings?

A. No.

RXQ. 14. How long in the Paulson machine—

790 the Lathrop-Paulson machine—does that inverted can remain over the drip savings before it gets into this?

A. Probably fifteen seconds.

RXQ. 15. In your opinion, does all the milk get out of it in fifteen seconds?

A. Yes, sir.

RXQ. 16. Nothing is used in the way of a stimulant to hasten it up? Any cold water? What do you do?

791 A. Warm up with steam on the inside.

RXQ. 17. You don't put steam on the inside of this inverted can when it has milk to drop down? Doesn't the steam which you inject into this inverted can from which the milk has not all dropped out, condense and come down with the milk also?

A. Yes, but it is sterile water.

RXQ. 18. Then in the drip pan for your savings device, you will have the remnants that drop out of the can, combined with this sterile steam water,

792 will you?

A. Only when you use the thawing device. That is a different arrangement and different patent.

RXQ. 19. I am talking about the thawing device. That is the one you use over this drip saving device now. And do you mean to say that that milk mixed in with condensed steam, is, in the City of Chicago, being bottled by the Borden's and sold to the trade as milk?

A. It has been, yes, sir.

RXQ. 20. And is it your opinion that that is a

793 superior grade of milk to the raw milk that comes from the cow? ?

A. I didn't say so.

RXQ. 21. But is it, now?

A. No, not superior.

RXQ. 22. But that is a fair description of some of the savings from your mechanism of can washing with the drip saver?

A. Some, yes.

RXQ. 23. Now the rapidity with which, and the completeness with which this drip saver saves, is 794 also contingent upon the condition of the can itself, is it not?

A. In what manner?

RXQ. 24. Is it in any degree?

A. What is your question?

RXQ. 25. The condition of the can itself—the shape of the can?

A. Very little. Some. I don't think they vary enough here to make any difference.

RXQ. 26. Will the milk come out of a brand new can the same speed as a can that is two or three 795 years old and indented?

A. I would say it would, and just as quick.

RXQ. 27. Rust conditions would have no effect upon retaining the fat content you are talking about?

A. You are not supposed to use rusty cans.

RXQ. 28. You know the cans are of different conditions that you use. That is, practically all of them are different.

A. Oh, yes.

796 RXQ. 29. Now in this mechanism for moving the can through the washing machine, let me ask in reference to the way in which the can itself actually moves through the machine in the Lathrop-Paulson can washer, is that actual motion of the can, regardless of the mechanism that you use, a continuous movement in which the can is going all the while, or one in which the can moves and is stationary without moving, for periods of time?

797 A. Intermittent.

RXQ. 30. By that you mean it stops and is perfectly stationary at times?

A. Yes, sir.

RXQ. 31. If the can were inverted upon a continuous carrier which was constantly moving, would the can at any moment, be stationary?

A. Not if it was moving, it couldn't be stationary.

RXQ. 32. When did you first, with the Lathrop-Paulson, manufacture with the drip saving device,
798 a mechanism for carrying the cans of your washer, which occasioned the can to remain intermittently stationary, and then to move on further through the machine?

A. Always it has been done that way.

RXQ. 33. And that begins about?

A. 1914 or 1915, I can't give you the exact date.

RXQ. 34. Before that time you were not manufacturing these?

A. No, sir.

By Mr. Staples: That is all.

Re-Re-Direct Examination by Mr. Richards:

RDQ. 1. Now with reference to these prior suits that have been discussed here, the suit by Hood at Philadelphia against the Supplee-Wills-Jones Company, was based on what patent or patents?

By Mr. Staples: Don't you think that ought to be a matter of expert

By Mr. Richards: This was a vitally interested party, and I want to clear up the situation that you involved a little bit.

RDQ. 2. That suit at Philadelphia, was based upon what patents?

A. On the Blair patent and the Hood patents.

RDQ. 3. Which one was it, do you remember?

By Mr. Staples: He said both of them.

A. That was why my belief is that it was on the Hood patent entirely.

RDQ. 4. And I believe it was on the Hood patents against a customer of yours? That is correct, is it not?

A. Yes, sir.

RDQ. 5. Now the suit at Boston was based upon what patent or patents?

A. On the Blair.

RDQ. 6. And that was a suit filed by you against this same Hood?

A. Yes, sir.

RDQ. 7. On the Blair patent?

A. Yes, sir.

RDQ. 8. Now what can you say as to whether or not you owned the Blair patent at this time?

A. It was first bought by the Lathrop-Paulson

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Company and then afterwards assigned to me. Just the date, I don't know.

RDQ. 9. Did you own it when you filed that suit against Hood at Boston?

A. Yes.

RDQ. 10. And how about when you filed the suit here against Davis-Watkins?

A. I owned it then.

RDQ. 11. Then you must have owned the Blair
803 patent all the time during these litigations that have been discussed?

A. Yes.

RDQ. 12. Now about this thawing device that has been discussed. As I understand you, that thawing device is employed for the purpose of thawing or melting milk or cream which has become frozen in the cans. Is that right?

A. That is positively right. That is the reason it has that name, thawing device to thaw milk.

RDQ. 13. And what would become of this milk
804 or cream if it was not thus thawed?

A. It would find its way into the soda solution tank, contaminate the washing fluid to such an extent, it would have to be rapidly changed.

RDQ. 14. And such milk or cream would also be lost?

A. Certainly.

RDQ. 15. Now, in the normal operation of one of your milk can washing machines, how long, as a general rule, does one of these cans remain over the drip saving pan?

A. Fifteen or more seconds.

RDQ. 16. How many of these cans would be constantly over the drip saving pan? 805

A. Practically three.

RDQ. 17. So that, as I understand you, each can would always remain over that drip saving pan at least during the time in which the operator could dump and place two more additional cans in the machine?

A. That is correct.

By Mr. Richards: That is all.

806

Re-Re-Cross Examination by Mr. Staples:

RXQ. 1. Mr. Lathrop, was there any thawing device on the Bowman Dairy washing machine that you saw?

A. I don't know.

RXQ. 2. You didn't see any?

By Mr. Potts: If there was, we will have another law suit.

RXQ. 3. Is there any provision for a thawing device in the Blair patents, so far as you know? 807

A. No, sir.

RXQ. 4. What earthly connection has this thawing device to either the Bowman machine that you claim is an infringement or the Blair patent that you claim it on?

A. The thawing device thaws frozen milk.

RXQ. 5. It doesn't have any connection with the Rice & Adams machine, so far as you know?

A. Not to my knowledge.

RXQ. 6. And it doesn't have anything to do with the Blair patent that you are suing on?

808 Harry D. Lathrop

A. No, sir.

RXQ. 7. And you don't know why you are giving testimony on this thawing device, except that you are being asked for it?

A. That is the reason I am answering them.

By Mr. Richards: It was Mr. Staples, was it not, who first introduced this thawing device and who first questioned you about this thawing device?

809 *By Mr. Staples*: It was not.

By Mr. Potts: The record will show.

STIPULATION

By Mr. Potts: It is hereby stipulated and agreed by and between counsel for the respective parties, that each party shall be at liberty and have a right to introduce in evidence, uncertified printed copies of any patents that the respective parties desire to introduce in evidence, with the same force and effect that

810 certified copies might be introduced, subject to any objection by the adverse party as to the materiality or competency, and subject to correction of any errors that may be discovered or appear, and that the dates of filing the respective printed copies of patents so introduced and the dates that they appear as having been issued, shall be accepted by both parties as being corect, in the absence of a showing of an error.

By Mr. Potts: Is that agreeable, Mr. Staples?

By Mr. Staples: It seems to me that would be natural. All of these copies are printed, as a matter of fact, by the government.

By Mr. Potts: I wish to offer in evidence, a copy of the Blair patent in suit, No. 880,713, dated March 3, 1908, for Can Washing Machine, granted to James R. Blair, application filed December 21, 1906, and ask that it be marked "Plaintiff's Exhibit No. 2."

812

ADJOURNED UNTIL FRIDAY, JAN. 29, 1926
at 10:00 o'clock A. M.

JANUARY 29, 1926, 10:00 A. M.
MET PURSUANT TO ADJOURNMENT

PRESENT: Joshua R. H. Potts and Brayton G. Richards, Esquires, on behalf of Plaintiff.
Nobody appearing on behalf of Defendant

GEORGE E. McFADYEN

813

George E. McFadyen, being recalled as a witness, testified as follows:

Direct-Examination by Mr. Richards:

Q. 1. Have you made a search for the correspondence you mentioned in your testimony yesterday, and if so, what has been the result of that search?

A. I made a diligent search for it, and have been unable to locate it, and believe that it was

destroyed at the time the office of the Chicago branch was destroyed.

Q. 2. Please state to the best of your recollection, the substance of that letter that you received on that occasion.

A. The substance of this leter which was written and signed by Orlando Adams, was for me to meet their lawyer, Mr. Bean, and assist him in taking depositions in Mr. Potts' office. The date of that letter, if I remember right, was November 12, 1922. That was signed by Mr. Orlando Adams.

Certificate

Depositions Closed

State of Illinois, } ss:
County of Cook. }

I, Margaret Auer, a Notary Public within and for the county of Cook and State of Illinois, do hereby certify that the foregoing depositions of:

CLARENCE EDWARD THREEDY
CHARLES McEWAN
RICHARD GUENTHER
WALTER H. PAULSON
GEORGE E. McFADYEN
HARRY D. LATHROP

were taken on behalf of Harry D. Lathrop, Plaintiff, in the above entitled suit, pursuant to the Notice hereto annexed, before me, at Suite 1500 Burnham Building, in the City of Chicago, in said County, commencing on the 19th day of January,

1926; that said witnesses were by me duly sworn before the commencement of their testimony; that the testimony of said witnesses was first taken by me stenographically and then written up by myself on the typewriter; that the defendant, Rice & Adams Corporation, was represented by counsel during the taking of such testimony, as indicated therein; that said testimony was taken at Suite 1500 Burnham Building, Chicago, Illinois, and was commenced at 10:00 A. M. on the 19th day of January, 1926, was continued pursuant to adjournment, and was concluded on the 29th day of January, 1926; that the signatures of said witnesses to said depositions was waived by agreement of counsel; that I am not connected by blood or marriage with either of the parties to said suit, nor interested directly or indirectly in the matter in controversy. 818

In Testimony Whereof, I hereunto set my hand and affix my seal of office, at Chicago, in said County and State, this 24th day of February. 1926. 819

MARGARET AUER,
Notary Public.

820 Jesse A. Holton

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
vs.
RICE & ADAMS CORPORATION,
a Corporation,
821 Defendants.

In Equity
No. 793-D.

Boston, Massachusetts,
Tuesday, February 16, 1926.

Met pursuant to the foregoing notice for the purpose of taking depositions in behalf of the plaintiff, Harry D. Lathrop, at 10 o'clock a. m., at the offices of Emery, Booth, Janney & Varney, 50 Congress Street, Boston, Massachusetts.

PRESENT:

822 Representing Rice & Adams Corporation, Defendants: No one appearing.

Representing Harry D. Lathrop, Plaintiff: Joshua R. H. Potts, Esq.

Jesse A. Holton, a witness called on behalf of the plaintiff, being duly sworn to testify the truth, the whole truth and nothing but the truth, deposes and says as follows:

Q. 1. (By Mr. Potts): Mr. Holton, will you state your full name, address and occupation?

A. Jesse A. Holton; 166 Fairoaks Park, Needham, Mass.; patent attorney.

Q. 2. You are of legal age?

A. Yes. Age, 38.

Q. 3. How long have you been engaged in the patent business as an attorney, or associated with it, Mr. Holton?

A. I have been in the patent business since 1905.

Q. 4. And specializing in that line of work? 824

A. Yes, almost entirely in patent matters. I have handled a few general law cases.

Q. 5. You are a member of the bar of the State of Massachusetts, are you?

A. Yes, I am a member of the bar of the State of Massachusetts.

Q. 6. And the Federal Courts?

A. And the Federal Courts.

Q. 7. And admitted to practice before the Patent Office? 825

A. Admitted to practice before the Patent Office, and also admitted to practice before the Supreme Court of the United States.

Q. 8. Are you acquainted with Mr. James R. Blair, Mr. Holton?

A. Yes, I met Mr. Blair many years ago.

Q. 9. Can you state the date that you first met him, and the circumstances?

A. I met Mr. Blair in November of 1906 at a building in Cambridge, Massachusetts. It was in connection with the preparation by me of some

826

drawings to be used in connection with a patent specification.

Q. 10. What sort of a drawing was it; of what sort of a machine, Mr. Holton?

A. It was a drawing of a milk can cleaning machine.

Q. 11. Have you any memorandum by which you can fix the date that you first saw the machine referred to?

827 A. Yes, I was working for the firm of Emery & Booth at that time, and in connection with that work I kept a diary, or a book called a "Daily Reminder", in which I made entries daily of the work on which I was engaged. I have this book, and it is entitled "Daily Reminder, 1906", and bears my name in my handwriting on the front cover.

Q. 12. Will you refer to the first entry you have in that book that relates to making the drawing for Mr. Blair of the can washing machine that you have spoken of?

828 A. The first entry that I find is under date of Saturday, November 24, 1906, and is as follows: "Blair, can washing machine, 1684, four hours."

Q. 13. What does "1684" refer to, Mr. Holton, if you know?

A. It was the practice of the firm of Emery & Booth to give their applications under preparation an identifying number, and this was the identification number of that case.

Q. 14. Now will you proceed and refer to any other dates relating to this same case, and read them to the reporter?

A. I will list them as follows:

"Monday, November 26, Blair. 1684. Eight hours."

"Tuesday, November 27, 1906. Blair. 1684 Eight hours."

"Wednesday, November 28, 1906. Blair. 1684. Eight hours."

Friday, November 30, 1906. Blair. 1684. Four hours."

"Saturday, December 1, 1906. Blair. 1684. 830
Eight hours."

"Monday, December 3, 1906. Blair. 1684. Eight hours."

"Tuesday, December 4, 1906. Blair. 1684. Eight hours."

"Wednesday, December 5, 1906. Blair. 1684. Eight hours."

"Thursday, December 6, 1906. Blair. 1684. Eight hours."

"Friday, December 7, 1906. Blair. 1684. Six hours."

831

"Tuesday, December 11, 1906. Blair. 1684. Two and one-half hours."

Q. 15. Are those all of the entries, Mr. Holton, that you find relating to this particular machine?

A. Those are all the entries which I find relating to this particular machine.

Q. 16. In whose handwriting do those entries appear?

A. Those are all in my own handwriting.

Q. 17. I notice, Mr. Holton, that there is a page

832 missing from this book that would come under date of June 8 and 9, 1906, and likewise a memoranda page from the back of the book. Have you any knowledge of how or why those pages were removed?

A. I have no recollection about the removal of those pages.

Q. 18. Do you find any pages removed anywhere between the date of the first entry made on account
833 of your work in preparing the drawings of the application for patent on can washing machine for Mr. Blair and the date of the last entry?

A. No, there are no pages removed during that period. In fact, there are no pages removed from the time of the first entry of any work done for Emery & Booth during that year and the end of the year. One of the pages torn out is a memoranda page at the extreme end of the book, and the other page in June,—apparently June 8 and 9,—precedes any entries that were made in the book.

834 Q. 19. Then to sum it up, the book is intact from the part where you started in to the end of the year?

A. That is correct.

Mr. Potts. I wish to offer the memoranda book referred to by the witness in evidence and ask that it be marked Plaintiff's Exhibit 14, Holton memorandum book.

(Holton memoranda book is marked as Plaintiff's Exhibit 14.)

Q. 20. Mr. Holton, I hand you a copy of Plain-

tiff's Exhibit 2 in this case, being a copy of the patent granted to James R. Blair, March 3, 1908, No. 88718, filed December 21, 1906, and ask you to examine the drawings of that patent and state if you identify them; and if so, what are they. 835

A. I have examined the Blair patent and can identify the drawings as those made by me during the period just mentioned,—November and December of 1906.

Q. 21. When you went out to the plant to make the drawings for Mr. Blair, did you find a machine substantially the same as those drawings in the plant, Mr. Holton? 836

A. Yes, there was a machine operating there and these drawings were prepared from that machine. I also, in connection with Fig. 1 of the drawings used a photograph that had been taken of the machine.

Q. 22. And did the machine appear to be successfully operating at that time?

A. It was successfully operating. 837

Q. 23. Did you notice whether milk was being saved in the drip pan attachment or not at that time?

A. Yes, I recall that the cans were placed on the conveyor just as shown in Fig. 1 of the drawings, and that any milk remaining in the cans would flow out into the drip pan when the cans were placed in inverted position on the conveyor.

Q. 24. Will you state, Mr. Holton, if you met Mr. Blair at the plant when you made the sketches for the purpose of making the Patent Office draw-

838

ings that you have testified about, in November, 1906?

A. Yes. When I went to the plant, it was on a date corresponding to one of the early entries in the Daily Reminder, 1906. I note that the first entry in the month is Saturday, November 24. I am quite certain that it was not on this day, because I recall distinctly that it was in the afternoon. But if not on Saturday, it was not later
839 than Monday, November 26, or Tuesday, November 27, that I went to the factory in Cambridge and there met Mr. Blair, who was about the machine, operating the machine.

Q. 25. And the drawings were made under his instructions, were they?

A. Yes, they were.

Q. 26. You stated in response to the question that you used a photograph for the purpose of making Fig. 1 of the drawings as shown in the Plaintiff's Exhibit 2, the Blair patent. I hand you
840 a copy of Plaintiff's Exhibits 12 and 13 for identification and ask you whether or not either of those photographs are the one you referred to, or like the one you referred to?

A. Yes, the photograph marked Plaintiff's Exhibit 12 is either the identical photograph or one exactly like the one I had at that time and from which I worked largely in preparing Fig. 1 of the Patent Office drawings.

Q. 27. When were the entries in the memoranda book, Plaintiff's Exhibit 14, made, Mr. Holton?

A. That book was part of my drafting equip-

ment, and I carried it with me wherever I went on work, just as I would carry my T square and board and angles and pencils, and so forth, and the entries were made in this book daily, at least, and sometimes, if there were two or three jobs worked on in any one day, why, the entry would be made at the end of the time put in on the particular job. 841

Q. 28. Then to sum up, you would say that those entries were made on the days that the dates appear in the booklet? 842

A. Yes, that is true.

No cross-examination.

Deposition closed.

Signature and certificate waived.

Jackson C. Thyng, a witness called on behalf of the plaintiff, being duly sworn to testify the truth, the whole truth and nothing but the truth, deposes and says as follows: 843

Q. 1. (By Mr. Potts) Now, Mr. Thyng, will you state your name, address, occupation and age?

A. Jackson C. Thyng; 57 Ridgewood Street, Dorchester, Massachusetts; 50 years of age; superintendent of the Whiting Milk Company, Dorchester Division.

Q. 2. How long have you been engaged in the milk business in one way or another?

A. About 37 years.

Q. 3. Are you acquainted with Mr. James R. Blair?

844 Jackson C. Thyng

A. I am acquainted with Mr. Blair.

Q. 4. How long have you known him?

A. I have known him for at least 25 years.

Q. 5. What is his position?

A. General superintendent of the Whiting Milk Company, I should say.

Q. 6. They are dealers in general milk supplies?

A. They are.

Q. 7. Have you ever had any experience in the washing of milk cans at the Brigham plant?

845 A. I was foreman over there at the plant where that washer is installed for quite a few years.

Q. 8. You are referring to the can washing machine built by Mr. Blair?

A. I am, yes.

Q. 9. State what you had to do in connection with the washing of the milk cans.

A. My duties were to see that the men ran the machine right, and see that the jugs were properly cleaned and so forth.

846 Q. 10. In Boston they call a milk can a jug, do they?

A. Yes, sir.

Q. 11. What were the functions of that machine; what did it do?

A. Well they had, I think it was, three rotary pumps which pumped the water up into the jugs with force enough to clean them. There were three tanks of water. The first water was a cold rinsing water; the second tank was hot alkali water; and the third tank was hot rinsing water. Steam followed that—live steam.

Q. 12. Was the hot rinsing water, scalding water, at high temperature?

A. Yes.

Q. 13. State, if you know, if that machine was equipped with a drip pan saving device to save the milk uncontaminated by the washing fluid.

A. The machine was equipped with the drip pan at the time I was on duty over there.

Q. 14. About when was it that you were on duty there?

848

A. About 12 years ago I started over at the plant there at Cambridge, and left the place two years ago, which would be in 1924.

Q. 15. I hand you some slips, Mr. Thyng, marked for identification as Plaintiff's Exhibit 11, and ask you what they are, if you know.

A. This is the milk that was handled on these dates, the number of cans of milk, and also the number of quarts of milk that were caught in the dripping pan of the can washer.

Q. 16. Will you take those slips in their order and read to the reporter just what each one of them contains?

948

A. On August 11, 1921, there were 4446—8½ quart cans of milk put up that day, and 127 quarts were caught from the dripping pan on the can washer.

Q. 17. That is, you mean to say that 127 quarts were saved that otherwise would have gone into the sewer without the dripping pan?

A. Yes. Now, August 12, 1921, there were 3,978 and 6/8 cans went up on this day, and there

850

were 119 quarts of drippings saved from the can washer.

August 14, 1921. 3,818 and 4/8 cans went up; 85 quarts of dripping saved.

August 15, 1921, 4,146 cans went up; 102 quarts of drippings were saved on that day.

August 16, 1921, 3,948 cans went up; 110 quarts of drippings were saved.

August 19, 1921, 4,925 cans of milk went up;

851 119 quarts of drippings were saved.

August 21, 1921, 4,154 cans went up; 102 quarts drippings saved.

August 24, 1921, 4,319 cans went up; 102 quarts drippings were saved.

That is all.

Q. 18. In whose handwriting is the memoranda which you have just referred to?

A. These memoranda are made in my own handwriting.

Q. 19. When was the memoranda made?

852 A. It was made between August 11, 1921, and August 24, 1921, inclusive.

Q. 20. In other words, each one of them was made on the date that it refers to?

A. They were.

Q. 21. And made for the purpose of keeping a record of the items there mentioned?

A. They were.

Q. 22. And under whose instructions did you do that?

A. Mr. Blair's. He was the superintendent of the plant at that time at Cambridge.

853

Q. 23. Mr. Thyng, would you state that during all the time that you worked on the Blair can washing machine that the amount of milk saved each day would average approximately the same as on the dates you took the memoranda which you have testified about?

A. There was little variation. There would be anywhere from, probably, a half jug variation, which would be about 20 quarts, in the amount of milk we were putting up at that time.

854

Q. 24. And that variation would depend upon what?

A. Upon the way the men dumped the milk. Sometimes they would not let the jug remain bottomside up long enough to get the milk out.

Q. 25 What was done with those savings after they were saved?

A. They were sent up to the butter factory and made into butter.

Q. 26. The drip saving feature on the machine has been in use continuously ever since the machine has been in operation, so far as your knowledge goes?

855

A. It has.

Q. 27. That is, always when you have had knowledge of it?

A. Yes.

Q. 28. Is it still in operation?

A. It is still in operation.

Q. 29. And the drippings are still used?

A. For the same purpose, yes.

856 Frank S. Goodhue

Q. 30. And those drippings saved entirely uncontaminated by the washing fluid?

A. They are.

Mr. Potts. I wish to offer memoranda slips which the witness has testified about, and which are fastened together, in evidence, and ask that they be marked as Plaintiff's Exhibit 11.

857 (Memoranda slips covering milk canned and milk savings from August 11, 1921, to August 24, 1921, inclusive, are marked as Plaintiff's Exhibit 11.)

No cross-examination.

Deposition closed.

Signature and Certificate waived.

Frank S. Goodhue, a witness called on behalf of the plaintiff, being duly sworn to testify the truth, the whole truth and nothing but the truth,
858 deposes and says as follows:

Q. 1. (By Mr. Potts) Mr. Goodhue, will you state your name, residence, age and occupation, please?

A. My name is Frank S. Goodhue; address, 1122 River Street, Hyde Park, Massachusetts; 69 years of age; I am a general mechanic.

Q. 2. By whom are you employed, Mr. Goodhue?

A. By the Whiting Milk Company.

Q. 3. How long have you been employed by that Company?

859

A. Thirty-seven years.

Q. 4. Is that Company in any way associated with C. Brigham & Company?

A. The Whiting Milk Company took over the C. Brigham & Company years ago, as I understand it.

Q. 5. And they orperated under the same general management?

A. The C. Brigham?

Q. 6. Yes.

860

A. They are all under one management now, the Whiting Milk Companies.

Q. 7. You are referring to David Whiting & Sons?

A. Yes, sir.

Q. 8. Do you know Mr. James R. Blair?

A. Yes, sir.

Q. 9. How long have you known Mr. Blair?

A. I have known Mr. Blair 36 years.

Q. 10. What is Mr. Blair's position?

861

A. Well, he is a general manager at the present time.

Q. 11. Of David Whiting & Sons?

A. Of the Whiting Milk Companies.

Q. 12. It is the Whiting Milk Companies now, is it?

A. Yes, sir.

Q. 13. Is that the same concern that was formerly David Whiting & Sons?

A. Yes, sir, a part of it.

Q. 14. Did you ever have any knowledge of Mr. Blair building a milk can washing machine?

862 Frank S. Goodhue

A. Yes, sir.

Q. 15. And when was it that he first started on that, if you know?

A. Well, it was about—according to these bills, which is the only way I can remember—1906.

Q. 16. Did you have any part in helping build the machine?

A. Yes, sir, I did quite a lot of work on that machine; all the woodwork and most of the steam-
863 fitting part.

Q. 17. I hand you two photographs marked as Plaintiff's Exhibits 12 and 13 for identification, and ask you whether or not they show the machine that was built in 1906, about which you were speaking?

A. I should say by these photographs it was the same machine.

Q. 18. What part of the machine is known by Exhibit 12 which you hold in your hand?

A. Well, this is what I call the forward end;
864 that is, that was the end that we put the jugs on.

Q. 19. Was there any change in that end of the machine, or that part of the machine, made before that photograph was taken, after the first machine was built?

A. Yes, sir.

Q. 20. Will you please explain what it is?

A. This drip pan that hangs under these jugs, —when it was first built it had an outlet on the side that came right out here (indicating).

Q. 21. That is, the drain pipe came out on the side?

865

A. Yes, sir. (Witness points to the side just at the right of the axle holding the wheels upon which the chain is operated.) Now, after we got this machine running with this drip on the side, it was right in the way of the man who put these jugs on, these containers, and we took that off, changed it around to this end, and had the jug set here that caught the drip.

Q. 22. As shown in the photograph?

A. As shown here. This is the way it is today, as far as I know, and it has been that way for years.

866

Q. 23. How soon after the first machine was built was that change made, Mr. Goodhue?

A. I could not recall that, but it was not more than a couple weeks, or a week perhaps.

Q. 24. Very soon afterwards?

A. It was very soon, because that was something that we made a little error on. It was right exactly in our way and we changed it. It was only a little work to change it around, but it meant a lot to the man who was putting the jugs on.

867

Q. 25. What part of that machine did you operate on and help build?

A. Outside of this wooden tank which shows here I built all this wooden part here, put up all this stuff here (indicating).

Q. 26. You are referring to the wood framework?

A. Framework, yes. At that time there was a wooden framework which went the whole length of the washing machine. I also set up these pumps,

868 Frank S. Goodhue

did all this small piping here, steam and water. (Witness points to the side of the machine.)

Q. 27. Under whose direction did you do that work, Mr. Goodhue?

A. Under Mr. Blair's directions.

Q. 28. I ask you to look at Plaintiff's Exhibit 13 for identification, the photograph I hand you, and state if that shows a part of the same machine; and if so, describe it as near as you can.

869 A. Well, this is the same machine. This is what we call the rear end. This is where the jugs come off. The chain traveled to the right. This would be the rear end. This is all of our work here, where we put up the belts, the steampipes, everything just as it was after we got it finished, and it is that way now as far as I know.

Q. 29. You helped build that machine from the beginning to the finish under the direction of Mr. Blair?

A. Yes, sir.

870 Q. 30. Prior to the time that you built that machine as shown in the Plaintiff's Exhibits 12 and 13, had you built any other sort of a can washing machine, or a part of one?

A. Yes, sir. Before we built this—

Q. 31. Just go ahead and describe what that was.

A. We set up a small rotary pump upstairs to find out just what they would do,—just what one of these pumps would do towards washing a cooler, and we arranged a kind of a skeleton affair, with angle irons, and so forth, and set this pump

871

up. I did the work myself. I had this series of perforated pipes connected up with the water and this pump, and then by turning the cooler upside down we drew it along on this framework to see if the water would go up with force enough to clean it.

Q. 32. With what success did it operate?

A. We found out that it would be a success if it was made a little larger, but the idea was all right, and from that we went ahead under Mr. Blair's orders.

872

Q. 33. And built the full sized machine?

A. Yes, sir.

Q. 34. Did that small experimental machine, or part of a machine, have any drip saver on it?

A. No, sir. No, that was only just to—in fact, we never put coolers through there with milk in them, you know. It was just to find out what force this pump would have in forcing the water into the cooler. We never used anything but cold water on it.

873

Q. 35. In other words, it was for the purpose of testing the efficiency of washing the cans by force of the water shot up into them?

A. Yes, sir.

Q. 36. And you found that that operated successfully?

A. Yes, sir.

Q. 37. Mr. Goodhue, I hand you a drawing marked Plaintiff's Exhibit 15 for identification and ask you if you recognize it; and if so what it is, what it represents.

874 Frank S. Goodhue

A. This is the original drawing, the one that we worked from.

Q. 38. In building the original machine?

A. In building the orginal machine. In fact, Mr. Blair drew that up, I don't know how long before we started the original machine, but we worked from this all the time.

Q. 39. Did you receive oral instructions from Mr. Blair in reference to that drawing?

875 A. Yes, sir.

Q. 40. And how to build the machine?

A. Yes, sir, we did. He was the only one we took any orders from in regard to building the machine.

Q. 41. Did you have any other drawing to work from except the one marked Plaintiff's Exhibit 15?

A. Not that I remember of. I don't think we did. This is the only one that I ever had that we worked from.

876 Q. 42. Does that show the drip pan and milk saver?

A. Well, yes that was the original plan. (The witness points to a little pipe marked 42 in pencil.) As I say, later on we put it over here (indicating).

Q. 43. You put it on the end?

A. On the end instead of the side.

Q. 44. But that drawing shows it on the side the same as it was on the first machine, as you first built it?

A. Yes, sir.

Q. 45. Before it was changed?

877

A. Yes, sir.

Q. 46. Who else worked on the machine with you, Mr. Goodhue?

A. Well, Mr. Prain, the tinsmith. He did quite a lot of work on it, when we got to the galvanized iron part, and so forth, and the soldering, and such work as that.

Q. 47. Was practically all of the work on it, then, done by you and Mr. Prain?

A. I don't remember that anybody else worked on it.

878

Q. 48. I hand you two bills of Wright-Zeigler Company, one of them being marked Plaintiff's Exhibit 17 for the purpose of identification, dated March 17, 1906, stating "3-16 cover 100 jug washer $4", and the other dated June 14, 1906, with the following item: "6-12, C. Brigham Company, labor on jug washer, $40", and ask you to state, if you know, if that refers to anything in reference to the building of this machine?

A. No, I could not say.

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Q. 49. You don't know about that?

A. I don't know about the bills, no, sir; I had nothing to do with them.

Q. 50. After the machine about which you have testified was completed, Mr. Goodhue, did you see it operated?

A. Yes, sir.

Q. 51. And when would you say it was finished and operated, as near as you can fix the date?

A. Well now, I could not fix the date very near the time that we got it finished and in operation. I

880 Frank S. Goodhue

suppose we were perhaps two or three weeks building it, or perhaps more.

Q. 52. Do you know when you started to work on it?

A. Only by the bills of the stock.

Q. 53. I hand you Plaintiff's Exhibit 19, dated May 31, 1906, Plaintiff's Exhibit 21, dated May 31, 1906, Plaintiff's Exhibit 20, dated from March 31, 1906, to June 30, 1906, and plaintiff's Exhibit 18, dated May 28 and 29, 1906, also plaintiff's
881 Exhibit 17, dated March 17, 1906 and June 14, 1906, and ask you to look at those and see if they refresh your memory in any way as to the date that you started to work on the machine, and when it was finished?

A. It must be around the first of March that we started to work, as this bill is dated March 31, 1906, and is for 28 days time in March. (Witness refers to Exhibit 20, a part of which is dated March 31, 1906, to C. Brigham Company.)

882 Q. 54. Then from the bill marked Plaintiff's Exhibit 20 for identification, when would you say that you probably started to work on the Blair machine?

A. Well, I should say it must have been about the first of March, 1906.

Q. 55. And you continued to work on it continuously from the time you first started until it was finished, did you?

A. Well, I could not say in regard to that. There might have been some delays in that time. We were getting stock, and so forth. But I know we

883

kept the work going; we did not have any hold-ups on it that I remember of.

Q. 56. Then would you say that you continued to work on it substantially continuously until you had finished the machine?

A. Yes, I would.

Q. 57. After the machine was finished, was it tried out to see whether it operated successfully or not?

A. Yes, sir.

Q. 58. What was the result? 488

A. It worked out first class in every way except in the drip pan.

Q. 59. What was the trouble with the drip pan?

A. Well, the outlet was on the side. That part we changed; we put it around on the end.

Q. 60. Why did you change it? What was the objection to its being on the side?

A. The chain traveled to the right and as a man stood up there to put this jug upside down, this spout and the jug which caught the drip were 885 right in his way; he could not get up to the machine near enough to do the work properly.

Q. 61. Then it was a matter of convenience which caused the change rather than the fact that it did not operate all right?

A. Yes, sir.

Q. 62. So far as its operating was concerned, it operated just the same on the side as it did after you changed it?

A. Yes, sir. The idea was all right. It worked out first class.

886 Frank S. Goodhue

Q. 63. Who was present when you tried out the machine, as far as you remember?

A. Well, there was quite a gathering there. Mr. Prain was there, and Mr. Blair. There were quite a few there. I don't remember of seeing Mr. Whiting but Mr. Blair says he was there and he probably was. I was busy.

Q. 64. You do not recall the names of any others whom you remember seeing there?

887 A. No, I do not.

Q. 65. Did the Company continue to use that machine with the drip pan on it after the first experimental tryout?

A. Yes, sir.

Q. 66. How long did they continue to use it?

A. Why, it is still in use today as far as I know; they always used it.

Q. 67. In other words, it has been in continuous use ever since it was built in 1906?

888 A. Yes, sir.

Q. 68. Did you notice about the quaintity of milk being saved from the use of the drip pan?

A. Oh, yes. Of course I had no way of knowing how much milk they were getting every day, but I used to see the jug there, and I saw them emptying it day after day, time after time.

Q. 69. Did you ever notice the milk coming from the drip pan, as to how large a quantity was coming out?

A. No, I wouldn't know just exactly how much, but it would take sometimes a couple of hours to

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fill a jug, and sometimes it would not take so long. That is the 20-quart jug.

Q. 70. When you are speaking of a jug, you mean a milk can?

A. Yes, sir.

Q. 71. Did you notice the thickness of the stream running from the drain up there; if so, state about how much of a stream when it was in active operation.

A. There would be quite a stream when the jug was first turned over, and I might state right here that that milk—I don't know as it has anything to do with it at all, but that milk we saved was much better than the rest of the milk because around the top of the jug, of course, setting in the can the cream would rise and a lot of it would collect around the top of this jug, and when you inverted the jug you would of course give it a chance to run out.

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Q. 72. The milk saved from the drainings, then, was of a richer quality than the ordinary milk in the can?

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A. Yes, sir, it was.

Q. 73. On account of the cream having adhered to the can?

A. Yes, sir.

No cross-examination.

Deposition closed.

Signature and certificate waived.

892 Thomas Prain

Thomas Prain, a witness called on behalf of the plaintiff, being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

Q. 1. (By Mr. Potts) Now will you state your name, address, age and occupation, Mr. Prain?

A. My name is Thomas Prain; I live at 12 Park Street, Cambridge; my age is 63; I am a tinsmith and manager, Wright-Zeigler Company's branch
893 in Cambridge.

Q. 2. How long have you been employed by Wright-Zeigler Company, Mr. Prain?

A. I think since 1889.

Q. 3. Do you know Mr. James R. Blair?

A. I do.

Q. 4. How long have you known Mr. Blair?

A. Well, it must be 24 or 25 years or more, I guess.

Q. 5. State if you ever did any work for Mr. Blair on building a milk can washing machine.
894

A. I did.

Q. 6. And when was that, Mr. Prain?

A. I should say it was early in March, 1906. Somewhere about that time.

Q. 7. I hand you a bill of Wright-Zeigler Company, marked plaintiff's Exhibit 17 for identification, consisting of one bill dated March 17, 1906, on which appears the following, "3-16 cover 100 jug washer $4", and the other dated June 14, 1906, on which appears the following item, "6-12. C. Brigham Company, labor on jug washer, $40",

and ask you to look at that exhibit and say if you identify it, and what it is. 895

A. I should say that this was the cover for the experimental washer, the small one that was built for the experimental washer. If you refer to the day book there perhaps it will show that.

Q. 8. Is that a bill rendered by you?

A. This is a bill for the breaking up of the cover. Over to my place here I haven't got a breaker so that I had them break the cover at the 896
factory and send over to me all broken up. That is, bent.

Q. 9. Just look at that, and identify it, say what it is for.

A. That was for the same thing except this was for the larger washer. This was for the washer that has been in use so long. It is $40 for breaking up the iron.

Q. 10. Are those bills, then, for material and labor furnished in connection with the milk can washing machine? 897

A. Labor and material through the factory.

Q. 11. Was it material used on the can washing machine?

A. Yes, sir.

Mr. Potts. I wish to offer the exhibit in evidence and ask that it be marked plaintiff's Exhibit 17.

(Two bills of Wright-Zeigler Company, dated respectively March 17, 1906, for $4, and June 14, 1906, for $40, are marked as Exhibit 17.)

898

Q. 12. Now, Mr. Prain, I hand you plaintiff's Exhibit for identification marked No. 23 and ask you what it is.

A. This is the day book that I kept at that time.

Q. 13. What is the date of the first entry in that book?

A. January 11, 1906.

Q. 14. What is the date of the last entry in it?

A. September 18, 1906

899 Q. 15. In whose handwriting are the various entries in that book?

A. It is all in my own handwriting.

Q. 16. I will ask you to examine that book, Mr. Prain, and state if you find any items in there charged against C. Brigham & Company for material or labor furnished in connection with the building of the Blair milk can washing machine, and if so, read them to the reporter in the order in which you find them in the book.

A. I find on March 16, 1906, "Cover for jug
900 washer, 32 pounds of galvanized iron, 1½ hours labor. See factory in regard to this iron." That was the breaking up of the iron, and that is the bill from the factory in regard to the same. (Witness points to plaintiff's Exhibit 17.) This was on the experimental machine, on the one tub.

June 12, 1906, I find "Galvanized iron work on jug washer, 198 pounds of galvanized iron, 4½ pounds of solder; Goodchild 13 hours labor; Prain"—that is myself—38 hours labor. Breaking iron for same at the factory, $40." That is all the charge for that washer.

Q. 17. When were those entries made, if you know, Mr. Prain?

A. June 12.

Q. 18. How about the other one?

A. March 16, 1906.

Q. 19. Was it your practice then to make the entry on the day the charge was made?

A. No, not always. I kept slips and at the end of the week I generally charged them up, charged up the work at the time, not necessarily on the same day, perhaps it might be a day or so afterwards. 902

Q. 20. In all cases, then, the work would have been done before the entry was made?

A. Oh, yes, surely.

Q. 21. Did you assist in building the can washing machine of Mr. Blair?

A. I did.

Q. 22. I hand you a drawing marked plaintiff's Exhibit 15 for identification and will ask you if you recognize it, and if so, what it is. 903

A. I do. I remember Mr. Blair bringing this over and showing it to me, showing what he intended doing.

Q. 23. Did you have that drawing where you used it while you were working on the can washing machine, as a guide?

A. Yes, sir.

Q. 24. State what, if any, instructions you received from Mr. Blair in connection with building the machine?

A. Well, he merely told me to go ahead and do

904 Thomas Prain

the sheet iron work that was on it, make the cover and the other things in connection with it, anything in the sheet iron line.

Q. 25. Who built the drip pan saving device?

A. I did.

Q. 26. And you spoke about an experimental machine. Where was that built?

A. Well, that was built first up on the butter room floor, a small machine to see how it would

905 work, merely as an experimental machine.

Q. 27. How did it work?

A. He came over and told me what he was going to do, that he was going to build that single tub machine up in the butter room to see how it would work out, and then on this washer he brought over this drawing and showed it to me.

Q. 28. When, as near as you can fix the date, was it that Mr. Blair first talked to you about building this machine?

A. Somewhere about the first of March, I

906 guess, 1906.

Q. 29. How soon after he first talked to you about it did you start on the experimental machine?

A. Well, they started on that right away.

Q. 30 And after the experimental machine was built, how long before you started to build the full size working machine?

A. They started on that right away. They wanted to get it done as quickly as they could.

Q. 31. Can you fix the date when the original full sized machine was completed?

907

A. Why, I should say two or three days before this charge on the book.

Q. 32. Which charge are you referring to? The charge in June?

A. In June. I should say that I charged for this perhaps a couple days after the job was done, after I saw that everything was all right.

Q. 33. Will you refer to the book, then, and state the date, as near as you can, when the machine was completed and tried out?

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A. Well, as near as I could tell it, I should say that the machine was—the charge here is made on the 12th of June, and I should say it was about two or three days before that. I did not make the charge before I found that everything was going all right because I might have some extra work to do.

Q. 34. Were you present when the machine was tried out after it was completed?

A. I was.

Q. 35. With what success did it operate?

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A. I did not stay there because my place is across the street, and of course after my work was done I went right back to the shop.

Q. 36. Who else was there in that connection?

A. Why, I saw quite a number there, but I did not take any particular notice as to who they were.

Q. 37. Can you name any of them?

A. Well, there was Mr. Goodhue, Mr. Blair, and several others there. I couldn't really name everybody who was there because I did not take

916 jug was in the way. We changed the drip, this tube here (indicating part marked 42), and we put it out here so that the jug is here instead of being in the man's way here (indicating). The man operating this thing has to stand here to put on those jugs, and this was in the way. Mr. Blair came over to me and told me to change that and put it right between the sprockets there so that the jug stood in out of the way here.

917 Q. 46. Then if I understand you correctly, the plaintiff's Exhibit 15 shows the spout draining the savings from the drip pan on the side, and that you built the original machine that way and afterwards changed it so that the spout came out of the rear.

A. That is the idea, yes; that is right.

Q. 47. Or front, whichever you might call it.

A. Yes.

Q. 48. Now, Mr. Prain, I hand you plaintiff's
918 Exhibit 12 for identification and ask you if that photograph is a true, correct representation of the original machine built in the Brigham plant for Mr. Blair, on which you worked; and if not, wherein it differs from the original machine.

A. That is the original machine.

Q. 49. Are there any changes made on it after the original was built?

A. No, sir. The tube came through up here somewhere, and this is where it is now, where it always has been. (The witness points to drain pipe.)

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Q. 50. The tube was on the side of the first machine, when it was first built?

A. We put it on the side, but it seems to me it only stayed there just a very short time and was changed to the end. Mr. Blair came over and said, "You better put that tube on the end instead of the side", so that I went over and changed it.

Q. 51. Then with the exception of the change of the drain pipe from the drip pan, that is identically the same as the original machine, is it?

920

A. Just the same as the original machine.

Q. 52. How soon after the original machine was built with the drain pipe on the side before you changed the drain pipe to the end?

A. Oh, it was changed right away. It did not hardly run any time at all on the side because it was in the man's way that was operating the machine.

Q. 53. What part of the machine does that photograph, plaintiff's Exhibit 12, show most clearly?

921

A. Well, I should call this the front of the machine, where they put on the jugs. The tubs are here, and this is where the jug goes on, and the milk goes down here, flows down into this pan and runs into the jug through this tube.

Q. 54. Then the first four or five cans that are upside down on the hood are all draining?

A. Those are all draining, yes, sir.

Q. 55. Then the first one of those has been draining while a man puts four more on?

922

A. Surely. It travels around on this endless chain here.

Q. 56. Now I hand you a copy of plaintiff's Exhibit 13, being a photograph of a part of a machine, and ask you if that represents any part of the original machine as you helped build it?

A. That is the original.

Q. 57. What part of the machine does it show most clearly?

923 A. Well, this is the other end. This is where they take off the jugs after they have been washed, after they pass through the tubs there.

Q. 58. When you say "jugs" you are referring to the milk cans?

A. Yes, sir. That is how they distinguish the 8-quart can from the larger 20 and 40 quarts. We call them jugs and the others cans.

Mr. Potts. I wish to offer in evidence the two photographs about which the witness has testified and ask that they be marked plain-
924 tiff's Exhibits 12 and 13 respectively.

(Two photographs are marked Plaintiff's Exhibits 12 and 13.)

The Witness. There is a positive identification here. When I made this steam dome here, my iron was short, I could not get it out of the one piece, so that you see there are two seams; there is a seam down here and a seam going down there. I had to add that piece there to get it out of the iron, as there was not quite enough for me to draft that

925

out, so that I had to add this piece into it. So that there is the seam of the piece that I put in. (The witness points to the steam dome on plaintiff's Exhibit 13.)

Q. 59. I will ask you to mark those seams, Mr. Prain, A and B for identification.

A. (Marking plaintiff's Exhibit 13 with the letters A and B.)

926

Q. 60. And you identify that positively, then, as a correct photograph of the original machine as built by you?

A. Yes, sir, I do.

Q. 61. With the exception of the change you have mentioned about the drain pipe?

A. That is a positive identification.

Q. 62. Mr. Prain, I hand you plaintiff's Exhibit No. 2, being a copy of the Blair patent in suit, and ask you to look at the drawings and state if you identify the same as being a representation of the original machine that you helped build under Mr. Blair's directions at the Brigham plant, commencing about the first of March, 1906, which you testified was completed and operated some time prior to June 12, 1906.

927

A. Yes, sir, I positively identify it as the same machine.

Q. 63. Have you any interest in any way in this litigation?

A. No, sir.

No cross-examination.

928 Deposition closed.

Signature and certificate waived.

James R. Blair, a witness called on behalf of the plaintiff, being duly sworn to testify the truth, the whole truth and nothing but the truth, deposes and says as follows:

Q. 1. (By Mr. Potts) Mr. Blair, will you state
929 your name, address, age and occupation, please?

A. James R. Blair; home address, 14 Center Street, Cambridge, Mass.; business address, 158 Massachusetts Avenue, Cambridge, Mass.; 57 years old, in the employ of the Whiting Milk Companies.

Q. 2. How long have you been in the employ of the Whiting Milk Companies?

A. On July 1 next it will be 37 years.

Q. 3 I hand you plaintiff's Exhibit 2, being a copy of patent No. 880,713, granted to James R.
930 Blair for can washing machine, March 3, 1908, on an application filed in the United States Patent Office December 21, 1906, and ask you if you are the same identical James R. Blair who filed that application for patent?

A. I am.

Q. 4. And it was filed on or about the date it states?

A. Yes, sir.

Q. 5. When, about, did you first conceive the idea of the invention set forth in that application, Mr. Blair, as near as you can fix the date?

931

A. In the fall of 1905.

Q. 6. And then what did you do first after you had conceived the idea?

A. From time to time I studied the thing over in my mind, and finally I made a rough pencil sketch of how a machine could be built to wash cans.

Q. 7. I hand you a copy of a pencil drawing marked plaintiff's Exhibit 15, and ask you if you identify that; and if so, what it is?

932

A. I can identify this pencil sketch as having been made by me at the time mentioned.

Q. 8. About when would you say, as near as you can fix the date, that you made that sketch, Mr. Blair?

A. This sketch is dated February 1906. When Mr. Townsend and Mr. Holton of Emery & Booth called upon me in November of that year in regard to my patenting this washing machine, Mr. Townsend advised me that if I had any drawings or sketches it would be well for me to date them and save them, as he might want to use them later.

933

Q. 9. And was that date placed on there then, after Mr. Townsend, or about the time Mr. Townsend, gave you that advice?

A. Yes.

Q. 10. And from that fact would you say that you finished that drawing about that time?

A. Yes.

Q. 11. I will ask you to look at plaintiff's Exhibit 15, Mr. Blair, and point out if it contains any-

934 James R. Blair

thing indicating a drip pan and a drain from the drip pan for the purpose of saving the milk uncontaminated by the washing fluid?

A. It does. At the loading end of the machine I designed a pan to be placed beneath the cans that were inverted, to catch the drainings from these cans.

(The witness points to lines just above the initials "J. R. B.")

935 Q. 12. Mr. Blair, do those lines indicate where you directed the drip pan to be constructed?

A. They do. And No. 42 on this sketch represents the outlet from this pan.

Q. 13. In your original sketch was the outlet at the end or side of the machine?

A. At the side.

Q. 14. And when you built the first complete machine was the outlet at the side or at the end?

A. At the side.

Q. 15. And how long did you continue to use that first machine with the outlet at the side?

936 A. A very short time only. I found that the can containing the drippings from this pan was in the way of the operator who put cans upon the machine, and decided to have the outlet in a different position.

Q. 16. And then where did you place the outlet?

A. At the left hand end of the pan.

Q. 17. Was plaintiff's Exhibit 15 used in giving instructions to the workmen to build the first machine from?

A It was.

Q. 18. And did you give them oral instructions from time to time in addition to the sketches?

A. Yes, I did.

Q. 19. Who were the workmen who built the first machine? ?

A. Our carpenter, Frank S. Goodhue, did practically all of the work, outside of the work done by a coppersmith named Thomas Prain employed by H. E. Wright & Sons.

Q. 20. Where has that pencil sketch, plaintiff's 938
Exhibit 15, been since the time it was made, Mr. Blair, as far as you know?

A. For some time it was in my desk at the Cambridge Office; it was afterwards kept in my home, until it was used in court proceedings about four years ago.

Q. 21. And after the court proceedings were completed in that case, was it returned to you?

A. It was; and has been in my home until today.

Q. 22. And you positively identify it as the original sketch and drawing made by you? 939

A. I do.

Q. 23. I hand you plaintiff's Exhibit 12, being a photograph, and ask you if you identify it; and if so, what it represents.

A. I do identify it. It represents the loading end of the can washing machine.

Q. 24. When was that photograph taken, if you know?

A. It was taken shortly after the machine was built.

Q. 25. Who had it done? ?

946

mental machine, and one dated June 12, 1906, for the finished machine.

Q. 36. Both of these bills then represent material and labor used in the construction of your experimental machine and first full sized machine, do they?

A. Yes.

Q. 37. When did you build the experimental machine, Mr. Blair?

947 A. In March 1906.

Q. 38. And what was the result?

A. The idea of building that machine was to demonstrate whether or not milk cans could be washed with the method which I proposed using and did use later in the finishing machine.

Q. 39. And did it work successfully or not?

A. It did. And on the strength of that the finished machine was built.

Q. 40. And how soon after you tried that experimental machine did you start to build a full sized

948 working machine?

A. I commenced very shortly to purchase and assemble the parts.

Q. 41. I hand you a bill and receipt marked Exhibit 16 for identification, and ask you what they are.

A. This is a bill received by me from Emery & Booth as a charge against me by them for services rendered by their Mr. Townsend and Mr. Holton in securing for me a patent for the can washing machine. Attached to this bill is a receipt in full payment.

Q. 42. Do that bill and receipt refer to the patent in suit?

A. They do.

Mr. Potts: I wish to offer this bill and receipt in evidence, and ask that they be marked Plaintiff's Exhibit 16. In words and figures they are as follows:

"STATE MUTUAL BUILDING

50 Congress Street 950

Boston, Mass., Dec. 17, 1906.

Mr. James R. Blair,

158 Massachusetts Ave., Cambridge, Mass.

Telephone

Main 5161 In account with EMERY & BOOTH

Nov. 24 Trip to Cambridge, examining Milk Can Washer preparatory to application ..... $ 12.00

Dec. 8

10

14 Preparing application No. 1684 Milk Can Washer .....$ 56.50 951

15

17

68.50

"CASH DISBURSEMENTS

Nov. 24

Dec. 1 On Patent Office Drawing for Milk Can Washer 30.94

8

15

952 James R. Blair

17 1st Government Fee Application No. 1684 ..... 15.00

$ 45.94
68.50

$114.44

Boston, Mass., Dec. 19, 1906

Received from James R. Blair

953 One hundred fourteen .....44/100 Dollars

Amount of bill rendered Dec. 17/06.....

EMERY & BOOTH,
by G. H. E."

$114.44

Q. 43. Now, Mr. Blair, I hand you two bills marked Plaintiff's Exhibit 18, and ask you if you identify those; and if so, state what they are for.

A. Yes, I identify these two bills, both covering stock used in the framework of the can washing machine.

954 Q. 44. What are the dates of those bills?

A. May 28, 1906, and May 29, 1906.

Q. 45. Are they the original bills?

A. They are.

Mr. Potts: I wish to offer these bills in evidence, and ask that they be marked Plaintiff's Exhibit 18. In words and figures they are as follows:

"640 Main Street,
Cambridge, Mass., May 28, 1906
Established 1841.

James R. Blair 955

Incorporated 1891.
G. W. Gale, President.
F. D. Sterritt, Vice-Pres.
J. M. Dean, Treas.
GEO. W. GALE LUMBER CO.
Sold to
C. Brigham Co. Factory
"Notify errors immediately. Settlements monthly
Discount 1½% ten days.
No. 9407 29 ft. 4x4 Hd. pine pts. 45 1.31 956
(Stamped)
APPROVED:"
"640 Main Street
Cambridge, Mass.
May 28, 1906
Established 1841.
Incorporated 1891.
G. W. Gale, President.
F. D. Sterritt, Vice-Pres.
J. M. Dean, Treas.
GEO. W. GALE LUMBER CO.
Sold to
C. Brigham Co. Del'd Man 957
Notify errors immediately. Settlements monthly.
Discount 1½% ten days.
No. 9422 15 ft. 2x9 Spruce pts. 35 53
(Stamped)
APPROVED."

Q. 46. I hand you another bill, Mr. Blair, marked Plaintiff's Exhibit 19, and ask what it is, if you know.

A. This bill was rendered us by David Whiting

958 & Sons of Wilton, N. H., for two sinks used in building the can washing machine, and also for two other articles not used.

Q. 47. Is that the original bill, Mr. Blair?

A. It is.

Q. 48. When was the order for those tanks placed with David Whiting & Sons?

A. About April 15, 1906.

959 *Mr. Potts*: I wish to offer this bill in evidence, and ask that it be marked Plaintiff's Exhibit 19. In words and figures it is as follows:

"Wilton, N. H., May 31, 1906

C. Brigham Co.

Bought of DAVID WHITING & SONS

Dealers in

Grain, Lumber, Coal, etc.

April	Acct.		$106.75
May	26	2 Sinks	14.00
	28	50 Can board, 50 cents	25.00
960		1 No. 2 Tank	10.50
			$156.25

Paid Aug. 15/06.

D. WHITING & SONS,

by Geo. G. Blanchard.

APPROVED.

J. K. W.

No. 2919."

Q. 49. I hand you a bundle of bills marked Plaintiff's Exhibit 20 for identification, dated March 31, 1906, May 1, 1906, May 31, 1906 and

June 30, 1906, and ask you if you identify those and know what they represent; and if so, please explain. 961

A. I identify these bills as bills rendered the C. Brigham Company by the Elm Farm Milk Company for services rendered by F. S. Goodhue. There are other items on these bills in addition to Mr. Goodhue's time.

Q. 50. What was the service rendered by Mr. Goodhue that is mentioned on these bills?

A. F. S. Goodhue was a repair man employed by the Elm Farm Company, and when needed his services were transferred to the C. Brigham Company. 962

Q. 51. And what work was he doing at the C. Brigham Company at the time which is mentioned on these bills, if you know?

A. Miscellaneous repair work about the plant; and he also assembled the can washing machine.

Q. 52. And his time for assembling the can washing machine is part of the labor mentioned on these bills, is it? 963

A. Yes.

Mr. Potts: I wish to offer these bills in evidence, and ask that they be marked Plaintiff's Exhibit 20. In words and figures they are as follows:

"Boston, March 31, 1906

C. Brigham Co.

TO ELM FARM MILK CO., Dr.

P. O. Address, Wales Place, Dorchester

964 James R. Blair

Telephone, Dorchester 450

F. S. Goodhue, 28 days time in March....$58.70

Cr.

Mch. Rent No. 9 Devon..... 45.00"

"Boston, May 1, 1906

C. Brigham Co.

TO ELM FARM MILK CO., Dr.

P. O. Address, Wales Place, Dorchester

Telephone, Dorchester 450

965

April	F. S. Goodhue, time $41.20	Rep.	$26.02
	in April, 19 Days	Worc.	6.50
	2.16⅝	Pratts	8.68

$41.20

Cr.

Rent No. 9 Devon...45.00"

"Statement

Boston, May 31, 1906

C. Brigham Co.

966 TO ELM FARM MILK CO., Dr.

P. O. Address, Wales Place, Dorchester

Telephone, Dorchester 450

May F. S. Goodhue, time in May.....$46.15

Repairs No. 9 Devon..... 1.00

Cr.

Rent No. 9 Devon..... 45.00"

"Boston, June 30, 1906

C. Brigham Co.

TO ELM FARM MILK CO., Dr.

P. O. Address, Wales Place, Dorchester

James R. Blair

967

Telephone, Dorchester 450

F. S. Goodhue, time for June.....$65.00 ded.
15.16 1 week

1 mo. ..... 49.84 J.K.W.
Deduct one week taken by Goodhue
for vacation.

Cr.

Rent No. 9 Devon.....45.00
(Stamp)
APPROVED J. K. W."

968

Q. 53. From this Plaintiff's Exhibit 20, Mr. Blair, when would you state that Mr. Goodhue worked on the can washing machine?

A. I know that Mr. Goodhue did some work on the experimental machine, and also put in several days' labor on the finished machine.

Q. 54. Mr. Blair, I hand you a paper marked Plaintiff's Exhibit 21 for identification, and ask you if you can identify it; and if so, what it represents.

969

A. This is a bill received from the American Tool & Machine Company for various fittings used in building the finished machine. This does not cover all of the fittings used, as a good many fittings were taken from the stock of supplies owned by the C. Brigham Company.

Q. 55. Is that the original bill, Mr. Blair?

A. It is.

Mr. Potts: I wish to offer this bill in evidence, and ask that it be marked Plaintiff's

970 Exhibit 21. In words and figures it is as follows:

"Boston, Mass., May 31, 1906

C. Brigham Co.

Bought of

AMERICAN TOOL & MACHINE CO.,

ENGINEERS, FOUNDERS and MACHINISTS

Terms, Net Cash 30 Days.

No Cash Discount Allowed.

971 109 Beach Street.

1—2" Shaft 5' 10", 58 4¼			$ 2.46
2" Collars, .80			1.60
2—2" Hgs. 24" Dp., $5.50		$11.00	
20%		2.20	8.80
2 P. Pulleys—20x6, .09		18.00	
60%		10.80	7.20
4 Lags, 5x⅝			
16 Lags, 8x½			
4—⅝ Washers.			
16—½ Washers			1.25
972 1—2" Shaft 15 ft., 150 4¼			6.37
2—2" Collars, .80			1.60
3—2" Hgs. 12" Dp., $3.80		11 40	
20%		2.28	9.12
6—Tap Bolts, 2¾x⅝, .08			.48
1—P. Pulley, 20x6		9.00	
60%		5.40	3.60
1—2" Shaft 7 ft., 70 4¼			2.98
2—2" Collars, .80			1.60
2—2" Hgs. 12" Dp., $3.80		7.60	
20%		1.52	6.08
4—Tap Bolts, 2¾x⅝, .08			.32

James R. Blair 973

4—1 11/16 Ped Boxes, $2.75.....	11.00	
20%	2.20	8.80
4—1 11/16 Collars, .70.....		2.80
1—1 11/16 Shaft 30"		
1—1 11/16 Shaft 36", 39, .5.....		1.95
8—Lags, 4x½		.30
2—2" Hgs. 12" Dp., $3.80.....	7.60	
2—1¾" 12" Dp., $3.20.....	6.40	
	$14.00	
20%	2.80	11.20

974

1—1¾" Shaft 6' 6", 46 4¼.....		1.95
2—1¾" Collars, .70		1.40
4—Keys, .25		1.00
2—P. Pulleys, 16x4, $5.75.....	11.50	
60%	6.90	4.60
2—1 11/16 Plain Collars, .70.....		1.40
1—Wood Pulley, 9x4	2.80	
1—Wood Pulley, 13x4	3.55	
	$ 6.35	
60%	3.81	2.54

975

No. 93 Iron, 4 pieces 4½.....	4.19	4.19
4½ hrs. Mach., Iron ½x¾ 15', .60..	2.70	2.70
1 hr. B. Smith, drilled.....	1.00	1.00
		$99.29

(Stamp)
APPROVED
J.K.W."

Q. 56. After you had finished the first complete,

976 full sized, can washing machine, Mr. Blair, did you try it out, to see how it worked?

A. I did.

Q. 57. And who were present when you tried it out?

A. The various mechanics who worked on the machine; the railroad crew who brought in the milk train were interested, and they all waited to see it tried out; also Mr. John K. Whiting, presi-

977 dent of the C. Brigham Company.

Q. 58. Can you name any of the mechanics who were there?

A. F. S. Goodhue and Thomas Prain. There were helpers in our engine room force present, but I do not remember their names personally.

Q. 59. Then I gather from your answer that there were quite a crowd there to see it operate?

A. There was.

Q. 60. And what was the result of the operation?

A. The cans were washed thoroughly.

978 Q. 61. And what was the result as to other features of the machine?

A. Why we then thought we had a perfect washing machine. In a few days' time we found that the pumps used became steam bound, and we substituted a different kind of pump.

Q. 62. What other features of the machine proved successful?

A. The general scheme of this machine was a long outfit so as to drain cans at the entering end of the machine, give them plenty of time to be washed and plenty of time to be drained before

they were removed from the discharge end of the machine, these cans being continuously conveyed on an endless chain carrier.

Q. 63. And did the draining feature work successfully?

A. It did.

Q. 64. Will you describe a little more in detail just how the drainage feature was constructed and operated?

A. Previous to the building of this machine men poured milk from cans into a receiving tank, and 980
when in a hurry they did not wait long enough to properly empty out all the milk. In conceiving this machine I could see the advantage of building the machine long enough to have a pan to collect the drainings from the cans before they arrived over the washing part of the machine.

Q. 65. And what was the object in draining it before it reached the washing part of the machine?

A. To save the milk which we had formerly been losing.

Q. 66. Did you succeed in saving it by this con- 981
struction, without in any way contaminating it with the washing fluid?

A. Yes. The inside of the hood was so arranged that water would not spatter out into the pan.

Q. 67. And what was done with the milk that you so saved in the draining pan?

A. That was separated, and the cream churned and made into butter.

Q. 68. What would you say as to the quality of the draining saved from the cans in that manner,

982 as to its butter fat, as compared with the bulk of the milk?

A. At one time I had our chemist examine samples of the milk received, and we found the butter fat averaged about 6 per cent; whereas the butter fat in ordinary milk at that time was about 3.7 per cent. This is due to the way the cans are drained. The cream that adheres to the side of the can immediately after the milk is poured out
983 does not all run out of the can by the time the man thinks that he has poured the milk all out; the result is that when cans that have been emptied are later drained the drainings contain more butter fat than the original milk.

Q. 69. Prior to the time you invented the machine as disclosed and claimed in the patent in suit, what happened to those drainings in a milk establishment?

A. That was all lost in the water used to wash the cans, and eventually ran into the sewer.

984 Q. 70. About what quantity of milk did you save a day in the average run that you had at the Brigham plant?

A. As I remember it, in the neighborhood of about 125 quarts of milk per day when we were handling in the neighborhood of 700-40 quart cans of milk. It varied somewhat with the men who poured the milk out of the cans. Some days the milk measured as high as 160 to 180 quarts, and other days a lesser amount; but I should say, as I remember, about 125 quarts per day.

985

Q. 71. That is the milk that you saved, you mean?

A. Yes.

Q. 72. And all of that formerly was wasted?

A. Yes; it was lost.

Q. 73. What became of the original milk can washing machine that you first built and that you have just testified about, Mr. Blair?

A. That was afterwards destroyed.

Q. 74. Are you referring to the experimental machine?

986

A. I am referring to the experimental machine.

Q. 75. And what happened to the first full-sized working machine that you built?

A. It was rebuilt with more substantial parts, and is still in use.

Q. 76. And has been in use continuously ever since 1906?

A. It has.

Q. 77. About what date was it that you completed that full sized machine?

987

A. The first of June, 1906.

Q. 78. And was the original machine equipped with the drain pan that you have been talking about?

A. It was.

Q. 79. And the drawings for the patent application that were prepared by Mr. Holton, do you know where he got the information from to prepare those drawings?

A. He and Mr. Townsend visited me at the Cambridge plant in November, 1906, and at that

988 James R. Blair

time I showed them both the machines and it was decided then that Mr. Holton would make drawings of the machines for Mr. Townsend to use in his application for the patent.

Q. 80. The drawings then were made from the machine that you then had in operation in the plant, were they?

A. They were.

Q. 81. Prior to the time that you conceived the
989 idea of building this machine, Mr. Blair, how were the cans washed?

A. Washed by hand, in sinks.

Q. 82. Had you ever seen a machine for the purpose of washing milk cans prior to that time?

A. No; I never knew there was one in existence.

Q. 83. Had you made any effort from any manufacturers to get a machine of that kind before you built the one that you have testified about?

A. Yes. After I completed the idea of building
990 a can washing machine I took the matter up personally and also by correspondence with Mr Willman of the Dairy Machinery & Construction Company of Derby, Conn., and requested him to build a can washing machine for us on the lines which I suggested. He was evidently busy with other work, and after waiting several weeks for him to do something, I finally decided to build a machine myself; which I did.

Q. 84. Mr. Willman then, I take it, was in the business of building dairy machinery?

A. He was.

991

Q. 85. But you were unable to get him to build a can washing machine?

A. At the time I wanted it built.

Q. 86. About what is the value of the milk saved per day at the Brigham plant by the use of the machine equipped with this drain pan?

A. The f. o. b. price at the present time for milk in Boston is 8½ cents per quart, when used as fluid milk; butter value is slightly less.

992

Q. 87. Is the draining of the milk from these cans a part of the necessary process of washing the cans?

A. With us it is.

Q. 88. In washing the cans in any plant it is necessary to get all of the loose milk out of the can, isn't it?

A. It should be.

Q. 89. And what would be the effect if that were allowed to run into the washing fluid?

993

A. The result would be that the washing fluid would become contaminated with milk and would have to be changed oftener during the day's work, and then the financial loss would be too great to warrant any such procedure.

Q. 90. Then if I understand you correctly,—to summarize your testimony on this point,—by the use of the drip pan saving device you not only save drippings and the value of it, but also reduce the cost of the whole process of washing the cans?

A. Yes.

Q. 91. So that it has a double value?

A. It does; it has two values.

994 Deposition of Defendant's Witness Hains

Q. 92. Mr. Blair, I hand you Plaintiff's Exhibit 2-a, and ask you to look at it and state if that contains your signature?

A. It does.

No cross-examination.

Deposition closed.

Signature and certificate waived.

995 (Adjourned)

Deposition of Defendant's Witness Hains

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF NEW YORK

996

HARRY D. LATHROP, Plaintiff, vs. RICE & ADAMS CORPORATION, a Corparation, Defendant.	*In Equity No. 793-D.*

Deposition of Robert P. Hains, taken in behalf of the Defendant, at the City of Boston, Mass., on the 2nd day of August, 1926.

Before,—

Eugene L. Cuneo, Notary Public acting as Commissioner by stipulation of counsel.

Robert P. Hains 997

APPEARANCES

Brayton G. Richards, Esq., for the Plaintiff.

Frederick G. Mitchell, Esq., for the Defendant.

It is hereby stipulated by and between counsel for the respective parties to the above entitled action that the testimony of Robert P. Hains, an expert witness for the defendant, be taken before the above named Notary Public and that one copy 998 of the Minutes thereof be furnished the counsel for the plaintiff, one copy to the counsel for the defendant, and one copy to the Court; that the cost of reporting this testimony and furnishing the above transcript will be paid by defendant upon submission of bill, except that the plaintiff shall pay for the copy thereof so furnished to him, and that the expense of taking such depositions and the cost of the copy for the Court, may be taxed as a disbursenent by the defendant, if successful in the suit. 999

Robert P. Hains, sworn.

Robert P. Hains, being duly sworn, on behalf of the defendant testified as follows:

DIRECT EXAMINATION BY MR. MITCHELL

Q. 1. Please state your name, age, residence and occupation.

A. Robert P. Hains; age 64 years; residence,

1000

Robert P. Hains

Newton, Mass.; mechanical expert and solicitor of patents.

Q. 2. Briefly outline the qualifications which enable you to testify in this suit involving patents and the comparison of mechanical construction.

A. I am a graduate of the United States Naval Academy, at Annapolis, Maryland, where I pursued a course of mechanical engineering and worked in the machine shops constructing various

1001 mechanical devices.

After about three years at sea and on my return to the United States I was appointed an examiner in the United States Patent Office, where I remained for about fourteen years examining applications for inventions and passing upon the usual questions arising in connection with the grant of letters patent and the last nine years of this time I was principal examiner.

In 1899 I resigned my position as principal examiner to follow the private practice of my pres-

1002 ent profession and since that time I have been constantly engaged in the consideration of letters patent, inventions, making infringement and validity reports and testifying as mechanical expert in the United States Courts. Since 1899 I have probably testified as mechanical expert in more than 200 cases arising in the United States Courts. In fact, my entire time since about 1884 has been occupied in this general line of work.

Q. 3. Have you examined the Blair patent in suit No. 880,713 of March 3, 1908?

A. Yes.

1003

Q. 4. Do you understand the construction, mode of operation of the machine described in the claim in the patent in suit?

A. Yes.

Q. 5. Briefly state what you understand to be the construction disclosed and claimed by the Blair patent in suit.

A. The Blair patent in suit is directed to a "can washing machine," and in the opening paragraph of the specification the patent informs us that

1004

> "This invention relates to apparatus for washing milk and other cans, pails and receptacles of various types *****."

In carrying out the purposes of the patentee the machine comprises a suitable supporting frame of a general oblong nature having a covering hood under which the can, whether they be milk cans or of other types, are moved progressively and continuously by an endless chain carrier. As the cans are moved by the carriers they pass in inverted position over a series of jets which inject water or other washing fluid into the cans, so that when the cans emerge at the delivery end of the machine they are supposed to be clean and suitably sterilized.

1005

At the entrance end of the machine there is provided a catch basin or drip pan, and over this the milk cans are turned upside down and placed upon the carrier, so that any residue of milk remaining in the cans when they are placed upon the carrier will naturally drop into the drip pan from which

1006 such drip milk may be directed through a spout to a receptacle beneath.

I do not understand that the issues raised in the present case relate to the particular construction of the can washer and its detailed mechanism so as to this it will be sufficient for our purpose to note that the washer has water or other washing fluid jets for impigning the liquid into and upon the exterior surfaces of the cans that are to be washed. The essentials of the Blair patent in suit

1007 therefore, may be briefly summarized as a milk can washing machine of appropriate type combined with a drip pan or milk saver, whereby the residue in the milk cans after they have been emptied of the main contents will run into a drip pan of some sort and be conveyed to an appropriate tub or other receptacle as such milk cans are turned upside down or inverted on the endless chain carrier at the entrance end of the washer.

Q. 6. You have mentioned a carrier as part of

1008 the construction disclosed in the Blair patent, will you describe this carrier more fully?

A. The carrier consists of two parallel chains, 10 and 11, each of which is endless. The upper runs of the two chains constituting the carrier pass through the washer and about sprocket wheels at each end of the washer. The sprocket wheels at the entrance end of the washer extend some distance beyond the washer and the same is true at the opposite end of the washer.

These sprocket chains are moved through the washer continuously by a driving mechanism, best

1009

indicated in Fig. 2 and comprising driving connections with a small shaft, 17, driven from a belt, 16, so that the two sprocket chains constituting the carrier of the patent are moved continuously and on these chains the inverted milk cans are placed at the entrance end of the manhine so that the milk cans themselves are carried in continuous procession from the entrance through and beyond the delivery end of the machine. It will be noted from the above that the carrier of the patent in suit consists of a pair of chains which support and carry the milk cans through the washer in continuous procession.

1010

Q. 7. Now, Mr. Hains, assume for the purpose of my question, that there is a can washing machine having a drip pan and that the cans are put through the machine by manual effort, would such a machine respond to the patent in suit and to the claims thereof?

A. No.

Q. 8. Why not?

1011

A. Because the patent in suit emphasizes the washing portion of the machine containing as a material feature thereof a carrier for the milk cans such as I have described in my answer to the previous question, and obviously any milk can washing machine which omits this carrier does not respond to the disclosures of the Blair patent in suit and the claims thereof, all of which include the carrier as a material element of the combinations.

Q. 9. Assume for the purpose of my question

1012 Robert P. Hains

that the cans are fed through the machine by a reciprocating mechanism or open gear mechanism to impart step by step movement to the cans, would such a machine respond to the Blair patent and to the claims thereof?

A. No.

Q. 10. Why not?

A. One of the important characteristics of the continuously moving carrier of the Blair patent
1013 which renders the can washing operation of value in the rapid washing of the cans, is the continuous action of the sprocket chain carrier which keeps the row of cans in continuous progressive movement through the washer. In any form of reciprocating feed mechanism which will move the cans step by step there is of necessity a pause in the movement of the can following each step movement with the result that the cans cannot be washed with the rapidity incident to the use of a continuously moving chain carrier.

1014 Q. 11. Have you made any examination of the prior patented art relating to milk can washing machines?

A. Yes.

Q. 12. From your examination of the prior patented art do you find that Blair by the patent in suit was the first to provide the combination of a milk can washing machine with a milk saver?

A. I find he was not the first to form such a combination.

Q. 13. What patents in the prior art did you find

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having a combination of a milk can washing machine and a milk saver?

A. For brevity I will not refer to any large number of patents but confine my answer to the following few patents of the prior art.

Stubbs No. 781692, February 7, 1905.
Hood No. 864133, August 20, 1907.
Hood No. 864132, August 20, 1907.

These patents answer your question, I think, but I take the liberty of referring incidentally to two or three more patents wherein the milk saving and can washing functions may be readily carried into effect by one ordinarily skilled in the art.

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Adams & Rice, No. 745752, December 1, 1903
Adams & Rice, No. 764222, July 5, 1904.
Wright, No. 850199, April 6, 1907.
(Application filed July 28, 1903)

Q. 14. In order to assist the Court in the examination of these patents, will you please state the disclosures in the Stubbs patent to which you have referred?

1017

A. The Stubbs patent discloses a milk can washing machine combined with a milk saver and the opening paragraph of the specifications tells us that

> "This invention relates to washing apparatus, and has for its object to provide for simply and effectually washing and sterilizing milk cans and other receptacles and in this connection to effect a saving of the accumulation of cream and milk which are ordinarily lost with the wash water in the usual manner

1018 of washing milk cans." (Page 1, lines 8 to 15.)

In the Stubbs patent the milk cans are inverted or turned upside down over a receptacle or milk saver and the residue of milk in the can runs into the saver and is led therefrom by a spout which directs the milk drippings into a receptacle where the milk is saved.

It may be that I may assist the Court in analyzing the disclosures in the Stubbs patent by briefly directing attention to the drawings of the patent.

1019

Mounted on a suitable framework, 2, is a receptacle or drain pan, 3, which may be rotated at times upon the table or frame. Within the receptacle for drain pan, 3, are the inclined walls, 26, terminating with catch basin as indicated at 27, Fig. 2. Communicating with the catch basin, 27, is a milk discharge pipe or spout, 4, and, as indicated in Fig. 1, below the delivery end of the spout, 4, is a milk can or tub, 25. In the use of the Stubbs machine the milk cans which have previously been emptied, as in the Blair patent in suit, are turned upside down or inverted over a spray nozzle, 7, above the drip pan, 27, and of course any residue of milk in the can will fall by gravity into the basin, 27, pass through the spout, 4, and be collected or saved in the receptacle, 25.

1020

The nozzle, 7, is connected by a pipe and T coupling with a reservoir, 9, Fig. 1, to which the T coupling communicates by means of the pipes 12 and 17. The reservoir, 9, may contain any washing fluid of course, but Stubbs tells us that it con-

tains hot water and steam for cleansing the milk cans and sterilizing them. 1021

At each side of the T coupling, 8, Fig. 1, the pipes 12 and 17 are connected by valves under control of the treadles 14 and 23 so that by tripping the treadle 14 the water from the tank 9 may be injected through the nozzle 7 into the interior of the milk can and thereafter by tripping the treadle 23 steam may be injected into the milk can to sterilize it.

In the preferred use of the Stubbs apparatus each milk can will be inverted over the nozzle, 7, and if the machine attendant does not trip the valve through the treadle, 14, the uncontaminated drip milk will pass into the drip pan through the spout, 4, into the receptacle, 25, beneath. Stubbs evidently realized that much milk will adhere to the inside of the can after the drip milk has been discharged and saved, and so to increase the quantity of milk saved Stubbs suggests tripping the treadle, 14, momentarily to detach clinging milk from the inside of the can. Whether the machine attendant does or does not trip the treadle 14, depends upon his own option. If he does not trip the treadle, 14, the drip milk will be saved uncontaminated, but, should he trip the treadle, 14 momentarily a small portion of the hot water from the tank, 9, will go along with the milk saved. 1022 1023

Stubbs suggests that when the treadle, 14, is thus tripped and some water goes with the milk along with any other impurities the milk may be

1024 reclaimed quite uncontaminated by means of an ordinary centrifugal separator.

After the milk has been saved as above noted, the receptacle, 3, or drain pan is rotated to carry the spout, 4, from above the milk saving receptacle, 25, and thereupon the full flow of the washing liquid first by one treadle and then by the other will be forced into the milk can to wash and sterilize it and the washing liquid will be collected in another receptacle for future use if desired.

1025 Q. 15. Is the can washer described in the Stubbs patent of the same detailed construction as the can washer of the Blair patent?

A. No. In the Blair patent the washer continuously moves a number of cans in procession through the machine over the washing jets by means of the sprocket chain carrier, whereas in Stubbs the washing machine washes one can at a time.

Q. 16. Was the can washer of the Blair patent

1026 new at the date of the Blair patent?

A. No, except insofar as the *endless chain carrier of the Blair* patent is concerned. I find a number of patents in the prior art showing substantially the same construction of washer as disclosed in the Blair patent except that none of them have *the endless chain carrier.* Without describing these prior patents I merely note them as follows:

Hood, No. 864133, August 20, 1907 (Application filed October 24, 1906).

Hood, No. 864132, August 20, 1907 (Application filed October 24, 1906).

Adams & Rice, No. 745752, December 1, 1903. 1027

Adams & Rice, No. 764222, July 5, 1904.

Wright, No. 850199, April 16, 1907 (Application filed July 28, 1903).

Q. 17. In order to further assist the Court will you please briefly state the disclosures in the Hood patent No. 864133?

A. This Hood patent is entitled "Hood Apparatus for Cleaning, Sterilizing and Drying Milk Cans" and it has the usual frame and hood between which the milk cans are moved during the washing operation. 1028

At the entrance end of the washer is a track or support 4, see Fig. 1, on which the milk cans are inverted and from which they are pushed into the washer. Below the support or track, 4, is a catch basin, best shown in Fig. 2 of the patent drawing and located adjacent to 6. This catch basin is funnel shaped as will be seen and from it leads the spout, 3. Obviously when the milk cans are inverted on the support or track, 4, any drip milk still in the can will drop into the catch basin, 6, below and pass into the spout, 3. 1029

The Hood patent tells us that the spout, 3, may lead to the sewer as evidently Hood did not regard the drip milk as being sufficiently valuable to collect it for future use. Had he wished to save the milk drippings he would have done the obvious thing, namely, lead the spout, 3, into a tub or barrel. I say "obvious thing" because to the mechanical mind whether the milk drip be saved or thrown

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away would depend upon its value or the desire of the machine attendant. It is similar in this respect as the practice of saving rain water or letting it go into the sewer. I remember as a boy when on the farm we led the rain from the roof through a spout into the rain barrel and saved it for use as water was valuable there, but when I came to the city later on where water had no special value the spout led from the roof to the sewer.

1031 It will be noted by reference to Figs. 1 and 2 of the drawings of the Hood patent that there is a nozzle, 2, located in the catch basin and discharge of water through the nozzle, 2, into the interior of the inverted milk can is controlled by a treadle, 26, Fig. 1. Obviously, if the treadle were not depressed to open the control valve, no water would pass into the interior of the milk can and the milk would be caught by the catch basin quite uncontaminated with the washing fluid.

1032 Q. 18. And now, Mr. Hains, for the same purpose will you likewise briefly describe the disclosures in the other patents to which you have heretofore called the attention of the Court.

A. The Hood patent No. 864132 (Application filed October 24, 1906) is a milk can washing machine of the same general type of that of the Blair patent in suit and at its entrance end, see Fig. 1 of the Hood patent drawings, is a catch basin, 29, from the bottom of which extends a spout, 30. The milk cans are inverted over the catch basin and of course the drip milk will be caught by the basin and delivered to the spout, 30,

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from which it may be either sent the sewer, as suggested in the patent, or saved in a receptacle according to the desire of the machine operative.

Adams & Rice patents, No. 745,752 and 764,222, each show milk can washing and cleaning machines wherein milk bottles are contained in a holder and inverted on trackways, 6. If one should put a bucket beneath the trackways, obviously the milk would be saved, but neither of the Adams & Rice patents show or describe this suggestion, although from the mechanical standpoint the use or non-use of a catch bucket would be dictated by desire to save or waste the drip milk. The inverted bottles are moved over a tank, 3, Fig. 4 of each patent, and there they are subjected to the action of wash water which drops into the tank below and is carried off by the spout, 27.

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The Wright patent is an apparatus for washing milk bottles, and here as in the Adams & Rice patents, the bottles are inverted over the trackway, 22, and move through the washer. Should the bottles contain any valuable milk the obvious way to save such milk would be to catch it in a receptacle beneath, a suggestion which is further emphasized by the drip pan, 18, Fig. 2 of the patent, which is over the tank A.

1035

Q. 19. In your examination of the prior art have you found any other instances where washers, or any other machine is combined with a drip saver, pan or receptacle for catching the drip?

A. Yes, the practice is universal and I have found a large number of patents which respond

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to your question, but I will not describe each of these patents. I merely select a few for illustrative purposes, because I have already made it plain, I think in my treatment of the patents hereinbefore referred to such as Stubbs and Hood, that the scheme of combining a milk can washing machine and a milk saver was old prior to the Blair patent in suit.

I merely list the following patents in answer to

1037 your question.

Schirmer, No. 708738, September 9, 1902.
Van Gilder, No. 546205, September 10, 1895.
Wright, No. 768836, August 30, 1904.
Groterjan, No. 639378, December 19, 1899.
Gibbs, No. 240404, April 19, 1881.
Hodgdon, No. 498549, May 30, 1893.

(RECESS)

Reconvened at 2:15 p. m.

1038 Q. 20. Mr. Hains, much has been said by the plaintiff in this case about the milk saved in the Blair construction being uncontaminated by the foreign substances and the washing fluid, what have you to say about it?

A. Regardless of the character of washer and milk saver there will always be contamination of the milk saved, because milk cans that are returned for washing contain on their exterior foreign matter incident to their shipment and handling and when inverted at the milk saving station this foreign matter will fall with the milk. I have noticed

this in witnessing the operations involving machines for washing milk cans such, for instance, as the Blair patent in suit. 1039

The workmen are naturally careless and I have seen them invert the milk can at the entrance end of the machine in such rough manner as they were placed upon the devices at the machine entrance that any foreign matter on the exterior is detached and goes along with the drip milk.

In any machine employing an endless chain carrier such as in the Blair patent in suit, it must be remembered that the carrier passes through the washer and then returns into a position over the drip pan. In the washer the carrier becomes laden with the washing fluid and at the milk saving station it passes over the drip pan with the result that some of the washing fluid will pass into the drip pan. 1040

In a factory or wash-house where these machines are used the floor and most of the machine itself are substantially reeking with moisture and this is particularly observable where the cans are sterilized by steam. I have seen the steam coming out of the entrance to the machine hood and of course it condenses on the colder surfaces and will go along with the drip milk. 1041

In my opinion, the idea of saving the milk substantially in its pure state as it drips from the inverted can is largely imaginative and the instances that I have seen have suggested to my mind that the milk thus saved is not fit for human use but might be utilized as hog food.

1042 In the Stubbs patent of the prior art there will be a much less contaminated condition of the saved milk than in a construction such as is found in the Blair patent in suit, particularly when the drip milk is collected without actuation of the treadle, 14, but even here there will be sufficient contamination to render the milk unfit for human use.

Q. 21. I show you Defendant's Exhibit No. 6 and Nos. 9 and 12, and for the purpose of my ques-
1043 tion you may assume that Exhibit No. 6 is a model of milk can washing machine having a drip saver at the entrance end and Exhibit No. 9 is a rough sketch and Exhibit No. 12 a drawing showing a milk can washing machine having a milk saver at the entrance end, would any more milk be saved by the milk saver of the Blair patent in suit than by either of the milk can washing and saving machines represented in Defendant's Exhibits No. 6, 9 and 12?

A. No.

1044 Q. 22. Why not?

A. In each of the exhibits to which you refer it appears that the milk cans are pushed through the washer by hand with a result that when a milk can is inverted over the milk saver it will dwell in this position until the next milk can is carried to and inverted over the milk saver, the effect being that there is more time for the drip milk to run from the can into the milk saver shown by the exhibits than in such a construction as the Blair patent in suit where as soon as the milk cans are placed upon the carrier they are at once moved over by

1045

the carrier's continuous progressive movement, so that less time would probably be allowed for the drip milk to fall from the cans to the milk saver in the Blair construction than in the machines shown by the exhibits.

Q. 23. Would the drippings saved from the milk cans be more or less contaminated by the machines represented by the exhibits mentioned than in the machines represented by the patents in suit?

A. Less.

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Q. 24. Why?

A. Because in the machines of the patent in suit the sprocket chain carriers will bring some of the washing fluid to the milk saver from which it will drop with the drip milk, whereas in the machines illustrated by the exhibits there is no carrier and the milk that comes from the inverted milk can would not be subjected to the drippings such as come from the carrier of the Blair patent in suit.

Q. 25. Mr. Hains, is there anything further that you think of and that I have not covered which would be useful to the Court?

1047

A. No, except that I may summarize my testimony as follows. Prior to the Blair patent in suit the prior art teaches the ideal of combining a milk can washer and a milk saver. See patents to Stubbs 781692 and those to Hood 864133 and 864,-132.

Likewise the prior art teaches that the material parts of the milk washer of the Blair patent in suit are old and well known. See the following patents

1048 Robert P. Hains

Hood, 864133.
Hood, 864132.
Wright, 850199.
Adams & Rice, 745752.
Adams & Rice, 764222.

Except in so far as the continuously moving sprocket chain carrier of the Blair patent is concerned it appears there was nothing new or original in the Blair patent because the washer itself
1049 was old, the milk saver was old, combined with the washer, but in none of the prior art patents do I find the continuously moving sprocket chain carrier for moving the milk cans continuously from the milk saver through the washer, and if I may assume that Defendant's Exhibits 6, 9 and 12 show the defendant's machine, it does not have the sprocket chain carrier.

So far as drip milk contamination is concerned, it is as I have above stated largely imaginary since in any milk can washer and saver there will
1050 be foreign matter go along with the drip milk. Indeed, more so in machines of the Blair patent than in defendant's machine or the combined washers and milk savers of the prior art patent.

Direct Examination Closed

CROSS-EXAMINATION BY MR. RICHARDS

XQ. 26 You are the same Robert P. Hains who on or about January 25, 1922, testified as an expert in the case then pending in the United States District Court for the Northern District of Illi-

1051

nois, Eastern Division, entitled Harry D. Lathrop, Plaintiff, vs. Bowman Dairy Company, Defendant, in equity No. 2239, are you not?

A. Yes.

XQ. 27. And aside from Defendant's Exhibits Nos. 6, 9 and 12, the are patents and matters which you have here discussed have been practically the same as the patents and matters that you discussed in that previous litigation, are they not?

A. No.

1052

XQ. 28. Please point out the difference noting that in my question I said practically the same.

A. A number of additional patents have been referred to in my present testimony, which, I believe, were not treated in the Chicago suit. These patents are

Wright, 768836.
Gibbs, 240404.
Groterjan, 639378.
Van Gilder, 546205.

1053

XQ. 29. But these additional patents which you have mentioned are simply additional instances of matter which is disclosed in the prior patents which were discussed in that former suit, are they not?

A. Yes, they are merely cited for the purpose of showing the universal idea, well known for many years, of drip savers used in connection with various types of machines.

XQ. 30. In your direct examination you spoke, I believe, of the issues involved in this case. From your recollection of the former case against the

1054 Robert P. Hains

Bowman Dairy Company, the issues of the two cases are very much, if not practically, identical, are they not?

A. Except as to the question of infringement, which I do not recall to have been raised in the Chicago suit, and the additional prior art furnished by the evidence of prior use such as exemplified in Defendant's Exhibits 6, 9 and 12, and the additional patents to the prior art, yes.

1055 XQ. 31. To what question of infringement do you refer?

A. All of the claims of the Blair patent in suit include the milk can carriers which continuously move the milk cans through the washer from the milk saver, and I do not recall that this was emphasized in the Chicago suit so far as my testimony was concerned, and I further find since the carrier forms a material element of the claims of the Blair patent and is not found in defendant's machine as exemplified by the exhibits referred

1056 to I have been called upon in the present testimony to make clear that the defendant's machine thus exemplified does not contain the material elements of the Blair patent claims then consequently the question of an infringement is presented.

XQ. 32. The claims of the Blair patent are the same now as they were then, are they not?

A. Yes.

XQ. 33. And defendant's machine which it is charged is an infringement is the same now as it was then, is it not?

A. I do not know.

1057

XQ. 34. Or in other words, you have not been asked during this proceeding the direct question, and have not considered the direct question, of infringement as to the specific device which it is charged is infringed, is that correct?

A. No. Having been shown Defendant's Exhibits 6, 9 and 12, I have assumed that these exhibits exemplify in all substantial respects the present defendant's machine and I have testified that if this assumption is correct, they do not disclose the milk can carriers of the Blair patent in suit which

1058

forms an essential element of every claim of the Blair patent. This naturally raises the question whether or not the defendant's machine infringes any claim of the Blair patent and this, I think, was not treated by me in my testimony in the Chicago suit.

XQ. 35. The defendant's machine in the Chicago suit, and which it was charged was infringed in that suit did not involve an endless chain carrier or conveyor, did it?

1059

A. No, not as I remember, but what I meant to say in my previous answer was that this fact was not treated by me in my previous testimony.

XQ. 36. The endless conveyor of the Blair patent was discussed by you in your previous testimony, was it not?

A. Yes, it had to be referred to because it forms part of the Blair patent which I tried to describe.

XQ. 37. When you testified in the previous suit, and more particularly on Thursday, January 26, 1922, I will ask you to state whether or not you

1060 were not asked the following question and made in part the following reply:

"Q. 17. You have referred several times to the endless conveyor of the machine shown in the Blair patent in suit. I now ask you if there was anything of novelty or originality in the Blair patent in providing an endless conveyor to support, carry and transport milk cans or receptacles through a washing machine?

1061 *By Mr. Potts.* Objected to on the ground that the witness has already testified fully on this point and the question merely calls for repetition.

A. No. Endless conveyors for transporting receptacles to be washed and supporting them during the washing and transferring operation are very old in the arts, as will be shown by the following patents of the prior art:

The patent to Gillessen, 762,522, June 14,

1062 1904 (application filed Dec. 10, 1903) shows and describes a bottle washing machine, in which the bottles to be washed are placed upon an endless conveyor in an inverted position and are carried through the machine while supported on and carried by the endless conveyor.

The specification of the patent describes this feature in the following terms:

'The machine according to this invention is chiefly distinguished by an endless chain passing through a soaking vat, the bottles to be

washed being secured to the links of the said chain—'.

(page 1, lines 30 to 34).

And then the specification goes on to describe the two parallel rails 2, 2 of an endless track on which the conveyor rests as it conveys the bottles through the washing process.

In this patent the endless carrier not only carries the bottles through the washing process but, like the Blair patent in suit, it has sprocket or guide wheels *13* about which the chain is guided 1064 and by which the chain is driven.

The patent to Hodgdon, No. 498,549, May 30, 1893, hereinbefore referred to, shows an endless carrier for transporting dishes through a washing process, wherein the dishes are subjected to sprays of hot water and the specification of the patent in the opening paragraph thereof says the invention relates to 'dish washing machines,' the object being

'to construct a machine operated by steam 1065 or other power transmitted thereto which cleanses the dishes by passing through a course of continuously agitated sprays of hot water, and rinses them by the same devices carrying them through clean water.'

(page 1, lines 14 to 20).

And then the specification proceeds to describe the endless conveyor for transporting, supporting and carrying the dishes through the washing process, and says

'As will be seen in Fig. 1, an endless con-

1072 behalf of the defendant, in he above-entitled action, pursuant to attached notice, before Arthur J. Monro, a Notary Public in and for the County of Erie, State of New York, acting as Special Examiner, by consent of the parties, at No. 1144 Prudential Building, Buffalo, New York, April 22, 1926, beginning at 10 A. M.

Appearances: On behalf of plaintiff: Joshua
1073 R. H. Potts, Esq., No. 1500 Burnham Building, Chicago, Illinois, by Clayton G. Richards, Esq., of Chicago, Ill., and John S. Powers, Esq., of Buffalo, New York, of counsel.

On behalf of defendant: Messrs. Mitchell & Staples, No. 1144 Prudential Building, Buffalo, New York, by Frederick G. Mitchell, Esq., and Charles J. Staples, Esq.

STIPULATION

1074 It is stipulated that Arthur J. Monro, of Monro, Munson & Jenkins, Shorthand Reporters, Buffalo, New York, a Notary Public in and for the County of Erie, State of New York, acting as Special Examiner, by consent of the parties, may take the minutes of this depositon stenographically, and that when reduced to writing, the signature of the witness need not be added thereto, subject to correction of any clerical errors.

ORLANDO ADAMS, called by defendant and sworn, testified as follows:

Orlando Adams 1075

Direct-examination by Mr. Staples:

Q. Mr. Adams, you live in Buffalo?
A. Yes.
Q. What is your address?
A. 46 Penhurst Park.
Q. How long have you lived in Buffalo?
A. Since 1902.
Q. During all that time what has been your business?
A. Manufacturing milk plant equipment. 1076
Q. And with what company?
A. The Rice & Adams Corporation.
Q. That, at the present time, is a corporation organized under the laws of New York?
A. Yes.
Q. Prior to 1906 Rice & Adams was a co-partnership?
A. Yes.
Q. Consisting of Albert J. Rice and your father, Charles S. Adams?
A. Yes. 1077
Q. Is Albert J. Rice alive?
A. No.
Q. He died several years ago?
A. Yes.
Q. Is your father, Charles S. Adams, alive?
A. No.
Q. He died a few months ago?
A. Yes.
Q. And at present you are under a doctor's care yourself?

1078 A. Yes.

Q. Since 1922 what has been your connection with the Rice & Adams Corporation?

A. Well I have been a director and officer of the company—Secretary and Treasurer—and since the latter part of 1922 I have been manager of the business.

Q. And are you an officer of the company now?

A. Yes, I am Vice-President.

1079 Q. Who is the President?

A. Well, my father was President. He died the 20th of February.

Q. That office is vacant now?

A. Yes.

Q. Have you ever been engaged in any other business than the manufacturing of dairy supplies?

A. No.

Q. You were brought up in it?

1080 A. Yes.

Q. Were you engaged in the business prior to 1906?

A. Well, I have been practically engaged in it ever since I can remember—yes, prior to 1906.

Q. What was your first experience in Buffalo in the dairy business?

A. My first experience was in Attica, and that was about Spanish-American war time, in 1898. I moved to Buffalo in 1902 and I worked around the dairy which was operated by my father and Mr. Rice, known as The Attica Creamery.

1081

Q. That is, you had milk peddled from your plant in Buffalo?

A. Yes.

Q. In Attica did you have a milk plant?

A. Yes.

Q. Did you ship milk into Buffalo from Attica?

A. Yes.

Q. And then you moved into Buffalo and ran a milk dairy business?

A. Yes.

1082

Q. And how early did Rice & Adams engage in the manufacture of milk or dairy equipment?

A. About 1898.

Q. Were they the pioneers in the milk equipment business, so far as you know?

A. Well they were pioneers in the manufacture of bottle-washing and bottle-filling machines.

Q. And were they manufactured here in Buffalo?

1083

A. Well, the very first machnes—the very first bottle-filler, I believe, was manufactured in Attica; but from then on they were manufactured in Buffalo—bottle and can washers and bottle fillers.

Q. Prior to 1900, in round terms, for the most part, in the cities of the United States, the milk was brought in from the country and sold loose to the trade, was it not?

A. Well, it was in the section that I was acquainted with.

Q. And, just as a matter of history, about

1084 Orlando Adams

1900 developed the filling of milk and distribution of milk, in municipalites, in bottles, did it not?

A. Well, that was earlier than 1900. That first began to be developed around about 1890, but our connection with it began about 1897 or 1898. We bottled milk in Attica and shipped it to Buffalo.

Mr. Richards: This line of examination is objected to as being incompetent and immaterial.

1085 Q. Did you have any experience or knowledge of the manufacture of can-washing machines prior to 1906?

A. Yes.

Q. How much before 1906?

A. Well, in the summer of 1902 a machine was manufactured by Mr. Rice for washing the Boston style of milk can.

Q. Where was that manufactured?

A. That was manufactured in a tin shop at 140 Erie Street.

1086 Mr. Richards: The examination has proceeded far enough to indicate to counsel for plaintiff that probably an attempt is to be made to establish prior use or prior manufacture of a machine or machines having a bearing upon the Blair patent in suit. If this surmise is correct it is desired at this time to enter a general, formal objection to the introduction in this case of any testimony whatever, including this witness, for the purpose of establishing, or attempting to establish, prior use, on the ground that such evidence would constitute an attack on the validity

of the Blair patent in suit, and it is understood that this defendant at this time is estopped from asserting any attack on the validity of the Blair patent, the validity of the Blair patent having been adjudicated and determined in the suit at Chicago in the United States District Court for the Northern District of Illinois, Eastern Division, entitled "Harry D. Lathrop, Plaintiff, vs. The Bowman Dairy Company, In Equity No. 2239," the decision in the said Chicago case being res adjudicata as against this defendant.

1087

1083

Mr. Staples:

Q. At the time you mentioned the Sable tin Shop, in Buffalo, did you yourself go into that tin shop?

A. Yes, I was down there frequently.

Q. What was being done in the Sable tin shop, in Buffalo, by Rice & Adams, to your personal knowledge, in 1902?

A. Mr. Rice had machines built there—bottle washers and can washers and bottle fillers—and George Sable did the tin work and Mr. Rice did the iron work himself.

1089

Q. Now, do you remember distinctly the can-washing machine that was set up in the Sable tin shop in 1902, in the City of Buffalo?

A. Yes, I do.

Q. Can you describe that can-washing machine?

A. The machine had two tanks, on top of which was an angle-iron track, and over the track

1090 Orlando Adams

was a galvanized iron hood. The cans to be washed were shoved along on the angle iron track and received jets of water supplied by pumps. At the feed end of the machine was a galvanized catch pan, which acted as a milk saver and caught the loose milk as it drained out of the cans.

Q. Can you illustrate your description by any visible design or model that you have made?

1091 A. Yes, I have a model.

Q. Who made the model?

A. George Sable.

Q. Is he the same George Sable who manufactured, for Rice & Adams, the can washer you have described, in the Sable tin shop?

A. Yes.

Q. He is the same man?

A. Yes.

Q. You saw Mr. Sable in the plant in 1902, did

1092 you—in the Sable tin shop?

A. Yes.

Q. Is the model that you have just referred to the one that is on the table here before you at the present time?

A. Yes.

Q. I notice at one end of this model a pan underneath the projection of the covering. What is that?

A. That is a catch pan.

Q. Is that what you referred to as a drip pan?

A. Yes.

Q. I notice underneath that a spout. What was that?

A. Well, that was to allow the milk to drain off into a can below.

Q How is that fastened? This covered part represents what in the can-washing machine?

A. Well, that is the hood of the machine.

Q. What was done inside of the hood of the machine?

A. Well, the cans are washed inside of the machine.

Q. Does that illustrate fairly the relative relationship of the drip saving device, with the spout on it, to the can-washing machine that was constructed at the Sable tin shop?

A. Yes, very similar.

Q. What was the purpose of this projection underneath which is the drip saver? Is this the receiving end of the line that I am mentioning here—I am marking "Feed" right on it?

A. Yes.

Q. At the feed, or receiving, end—is that where the cans are designed to be brought up to the washing machine?

A. Yes.

Q. And how is this machine designed as to the position of the cans, to be inverted?

A. Yes.

Q. And then the cans are passed on through the hooded section of the machine?

A. Yes.

1096

Q. For washing?

A. Yes.

Q. On this machine in the Sable tin shop was there any other drip pan or saving device similar to the one you have just described?

A. Well, there was a pan at the outlet end.

Q. Is that at the opposite side here?

A. Yes.

1097 Q. Just mark with this pencil "Outlet" on the section that you refer to.

(Witness marks as requested).

Q. Now, where was the drip pan manufactured in the Sable tin shop, in 1902, used in connection with the outlet or discharge into this machine? Where was that drip pan?

A. It was underneath the track and it drained back into the tank.

1098 Q. Was that placed somewhat similarly on the outlet part of the machine as was the drip pan in the feed end of the machine?

A. Yes, with this difference; the pan at the feed end drained the milk into a can, and the pan at the outlet end drained the loose water back into the tank.

Q. I notice that in the model you have here the spout letting the drippngs out of the milk saver is near to the washing machine. Did you, in the Sable tin shop, in 1902, see that milk pan in a different position in reference to the spout being near to the washing machine?

1099

A. No, it was always nearer the washing machine.

Q. This drip saving pan was made distinct and separate and then put into this washing machine, was it not?

A. It was removable.

Q. Did you ever see the spout reversed so that it was farther away from the washing machine?

A. Yes, I have.

Q. In 1902?

A. No.

1100

Q. When did you see that?

A. Well, in recent years I have seen it that way.

Q. Now, the drip pan at the feed end, or receiving end, of this machine was for what purpose?

A. That was for catching the loose milk that drained out of the can and saving it.

Q. Was this drip saver at the feed end of the machine inside or outside of the can-washing machine?

1101

A. Well, it was outside of the hood and tank.

Q. Was it in a position where it received any of the washing materials under the hood?

A. Yes, some washing material might splash into it.

Q. Over into this here? (Indicating).

A. Yes.

Q. What was its purpose in being outside, to avoid the splash or what?

1102 Orlando Adams

A. Well, there was a little splash in it, but not very much.

Q. What was the purpose of the drip pan for the discharge end of the washing machine?

A. That was to catch the water that drained out of the cans and run it back into the tank.

Q. So that it could be used over again in washing?

A. Yes.

1103 Q. Was this can-washing device designed for keeping separate the washing fluid from the milk that went into the drip pan?

Mr. Richards: Objected to as leading.

A. Yes, it was.

Q. Where was the wash fluid in this washing machine to be used in reference to the drip pan saver?

A. Well, the drip pan was ahead. It came first.

Q. Was any of the washing fluid designed to
1104 be injected into the inverted milk can on the machine built in 1902, in the Sable tin shop, until the cans had been pushed forward into the covered part of the washing machine?

A. Well, the cans would not receive any washing fluid until they had been pushed underneath the hood about two positions.

Mr. Staples: This model is offered in evidence as Defendant's Exhibit No. 6, Defendant's Model.

Mr. Richards: The introduction of this model in evidence is objected to on the ground that no

proper foundation has been laid for it; it is also incompetent. 1105

(Defendant's Model, referred to, marked by Examiner as Defendant's Exhibit No. 6 of this date).

Mr. Staples:

Q. You said, Mr. Adams, that in this Sable tin shop, in 1902, was manufactured for Rice & Adams, also, a bottle-washing machine—did I understand you correctly? 1106

A. Yes, bottle-washing machines were manufactured there.

Q. Did you see a bottle-washing machine that was manufactured there in 1902?

A. Yes.

Q. About what time in 1902?

A. Well, in the fall of the year.

Q. Do you know what became of that bottle-washer? 1107

A. Well, there were a number of bottle washers made and they were shipped out on orders. I do not know just where they were sent to.

Q. Did you see one of the bottle washers in use after it was manufactured in the Sable tin shop?

A. Yes.

Q. Where? Did you have a dairy yourself?

A. Yes. Answering that previous question: I could not say positively that I saw any of the

1108 Orlando Adams

machines that were manufactured in the Sable shop in operation.

Q. What became of the machine that was manufactured in 1902 in the Sable tin shop—the can-washing machine?

A. That was shipped to some one in Boston by the name of Whiting.

Q. Did you see a drip saving device, for the saving of milk, in use anywhere prior to 1906, other than on the machine you have just described, Defendant's Exhibit No. 6?

1109

A. Yes, they were used on bottle washers and bottle fillers.

Q. Did you see any of them?

A. Yes.

Q. In 1902?

A. Yes.

Q. Where?

A. I saw it and, in fact, operated a bottle-washing machine with a drip saver on it.

1110 Q. Did you operate it yourself?

A. Yes, in the spring of 1902, at the Attica Creamery, on Allen Street.

Q. In the City of Buffalo?

A. Yes.

Q. Describe the drip saving device you saw operated in the City of Buffalo, in 1902, at the dairy you have just mentioned.

A. Well, that was a galvanized iron pan, suspended below the track, and it had an outlet in it, and as the bottles were fed into the machine the loose milk from the bottles went down into

1111

the pan and then into a can.

Q. Was this a bottle washer or a bottle filler?

A. I am talking about a bottle washer.

Q. It was a bottle washer?

A. Yes.

Q. Did you see a drip saving device prior to 1906 in use on a bottle filler?

A. Yes, I have seen it in use on a bottle filler —about 1898.

Q. Where?

A. At the Attica Creamery, in Attica.

1112

Q. Describe the milk-saving device, or drip pan, you have just referred to, in use at Attica, in 1898.

A. Well, that was a tin pan suspended below the track of the bottle filler to catch the loose milk that would overflow from the bottles.

Q. At which end of the bottle filler was that drip pan in Attica used, the receiving end or discharge end?

A. The discharge end.

1113

Q. What was the purpose of the drip pan on the Attica plant that you have just referred to?

A. That pan was to catch the milk that overflowed from the bottles.

Q. That was on the filler?

A. That was on the bottle filler.

Q. Have you seen many bottle fillers since 1898?

A. Yes.

Q. Did you manufacture bottle fillers in 1902 and 1903?

1114 Orlando Adams

A. Yes.

Q. Describe to what extent milk-saving devices were in use on bottle fillers, to save milk, prior to 1906.

A. Well, every bottle filler we made had a drip milk pan on it.

Q. Did you see, prior to 1906, bottle fillers made by any other company—milk-bottle fillers?

A. No, I did not.

1115 Q. Did you see their advertising?

A. Yes.

Q. Do you know whether they were provided wth drip saving devices?

A. Yes, I know they were.

Q. Did you ever see a bottle filler that did not have a drip saving device to save the milk, in connection with the bottle filler?

A. No, I never did.

Q. Now, going back to the bottle washer you had in the City of Buffalo, in 1902,where was the

1116 drip saver located with reference to the bottle-washing machine, in 1902, in Buffalo?

A. Well, it was underneath the track, at the feed end of the machine, just ahead of the wash tank.

Q. I have asked you to find, as best you could some picture; and I show you a descriptive circular of Rice & Adams dairy machinery. Can you see a picture on this circular, with which you can illustrate to the Court the drip saving device you had in connection with the bottle washer, in 1902, in the City of Buffalo?

1117

A. Yes; this is a picture of the Rice & Adams Automatic Combined Bottle Washer and Sterilizer.

Q. Does that fairly represent, or give a general idea fairly, of the bottle washer that you had in the City of Buffalo in 1902?

A. Yes, it gives a general idea of that machine. It is not exactly the same.

Q. Does it give it so that you can show just what connection the drip pan saving device that 1118
you have referred to had on that washer in 1902?

A. Well, it does not show the drip pan.

Q. Well, can you show it yourself?

A. Yes, I can show it.

Q. I notice there some lead pencil marks What are those?

A. It indicates the location of the drip pan.

Q. Were those lead pencil marks made by you?

A. Yes.

Q. Describe the drip pan. At which end of 1119
the machine was it?

A. It was at the feed end.

Q. Is that at the left-hand side of this picture?

A. Yes.

Q. Will you just mark opposite that the word "Feed"?

(Witness marks as requested).

Q. And then would you put a letter "D" on that portion that you have marked in lead pencil,

1120 Orlando Adams

indicating where was located, in 1902, the drip saver or milk-saving device.

(Witness marks as requested).

Q. And would you mark with a letter "S" the location of the spout in the drip saving device used by you in 1902. (Witness marks as requested).

Q. And would you mark with the word "Can" the relative place where the can, or receptacle,
1121 which received the savings from the milk-saving device went in 1902. (Witness marks as requested.)

Q. Now, is there any picture on this same descriptive circular from which you can illustrate the drip saving device you saw in 1902 in use in connection with a bottle filler in the City of Buffalo?

A. Yes, it is under the caption "Rice & Adams Automatic Bottle Filler No. 3."

Q. Will you kindly indicate, by writing and
1122 showing after the letter "D," location of the drip pan in reference to said bottle filler, in 1902; and by the letter "S" the spout leading from the milk-saving device used in connection with the bottle filler; and by the word "Can" the location actually used in 1902 in connection with this filler.

(Witness marks as requested).

Q. Now, do you know when this descriptive circular was printed?

A. In 1904.

Mr. Staples: I offer in evidence as Defendant's

Exhibit No. 7 the pictures just referred to and described by the witness, being the descriptive circular of Rice & Adams' dairy machinery. 1123

Mr. Richards: The introduction in evidence of Defendant's Exhibit No. 7 is objected to, first, on the ground that no proper foundation has been laid; and second, on the general ground that it constitutes an attempted attack upon the validity of the Blair patent in suit, and is incompetent for that purpose in this proceeding, as indicated above. (Descriptive circular of Rice & Adams Dairy Machinery marked by Examiner as Defendant's Exhibit 7 of this date). 1124

Mr. Staples: For the information of counsel, you may consider that the same objection lies to any portion of the testimony; and it is a decided attack upon any findings that were made by any courts without the information in the testimony now being presented.

1125

Mr. Richards: I understand from this statement, then, that this evidence is offered solely for the purpose of attacking the validity of the Blair patent. Is that correct?

Mr. Staples: That is not correct. It is offered for all of the purposes of showing what the true condition was; but we appreciate that you have raised in your pleadings the question of res adjudicata, which we have denied.

Mr. Staples:

Q. Now, Mr. Adams, it is a fact, is it not, that

1126 sometimes drip pans were made and sometimes drip pans were not made for washing machines?

A. Well, on all bottle washers we ever made there was always a drip pan at the feed end and a drip pan at the outlet end. On can washers quite a proportion of the machines did not have any drip pans.

Q. As a matter of fact, was there anything to this drip pan, that you know of, other than the old

1127 pan, or any kind of a device to catch the milk?

A. Well, if we had thought there was we would have had it patented.

Q. Well, was there?

A. We never thought it was worth patenting and we never showed it in our patents.

Q. And from your earliest memory is there a time when you did not know of a drip pan for the purpose of saving material?

A. From my earliest recollection we have always used a drip pan on our machines.

1128 Mr. Staples: You may ask.

Cross examination by Mr. Richards:

Q. You spoke, I believe, of a Sable tin shop, at which some work was done—I believe you stated in 1902. Will you please give us a little more definite information as to this tin shop, as to just where it was located in Buffalo.

A. The tin shop was located at 140 Erie Street and was run by George Sable. He began business in August, 1901, and began making drip pans for us when he first began.

1129

Q. And is he still located at 142 Erie Street?

A. 140, yes.

Q. Now, you also spoke, I believe, of a bottle washer that was used at a dairy here in Buffalo. Will you give me the address of that dairy—I did not catch it—and in order to make the record complete in that respect I wish you would give me the address of the dairy.

A. That was the Attica Creamery, at 227 Allen Street.

1130

Q. And it is still located at that address?

A You mean the creamery?

Q. The dairy.

A. No. That was sold to The Buffalo Milk Company about 1903.

Q. And is the Buffalo Milk Company located there?

A. No.

Mr. Staples: That was organized into The Queen City Dairy Company.

1131

Q. Do you know about that, Mr. Adams, about it being organized into The Queen City Dairy Company?

A. When The Buffalo Milk Company bought The Attica Dairy they closed up that business and moved the business to their headquarters, over on Niagara Street; and years later that was consolidated with The Queen City Dairy Company.

Q. What I am trying to get is: do you know what business or what building is now located at this same address, 227 Allen Street?

1132 Orlando Adams

A. The building is still there.

Q. But you do not know off hand what business is located there?

A. No, I do not.

Q. Now, this particular model that is here—marked as Defendant's Exhibit No. 6—when was that particular thing made?

A. That model was made within the last two or three weeks.

1133 Q. And especially for this litigation?

A. Yes.

Q. And that model, I presume, was made under your supervision?

A. No, it was not made under my supervision.

Q. What, if anything, did you have to do with the making of that model?

A. I did not have anything to do with it.

Q. You did not know before you came here, then, that it was going to be produced?

1134 A. Yes, I understood it was going to be produced.

Q. Then you must have had something to do with it.

A. I placed the order for it.

Q. You placed the order with Mr. Sable, was it?

A. Yes.

Q. And he constructed it?

A. Yes.

Q. Now, when you placed the order what instructions did you give him?

A. I did not give him any.

Q. Well, you must have given him some to place the order. 1135

A. I ordered a model of the first can washer that he built.

Q. Well you, as I understand it, then, instructed him to build a model of one of these can washers that he had previously built?

A. Yes. I told him to build it to the scale of about 2 inches to the foot.

Q. So that this is about 1-6 of the actual size then? 1136

A. Yes.

Q. Now, when you were giving your testimony here and describing the machine which you remember as having been built by Mr. Sable in 1902, you had this small model—Defendant's Exhibit No. 6—before you, did you not?

A. Yes.

Q. You spoke in your direct-examination, I believe, of Mr. Adams and Mr. Rice, who, I understand, were your predecessors in the present business? 1137

A. Yes.

Q. Will you please give their full names?

A. Charles S. Adams and Albert J. Rice.

Q. I think you also spoke of some patents having been taken out on some of these devices. Will you please state, if you know, who took out these patents?

Mr. Staples: I did not intend to ask for any

1138 patents and I have not gone into any patents myself. I asked, on direct-examination, no question in reference to any letters patent.

Mr. Richards: Well, your witness went into them.

Mr. Staples: Well, I object to any examination beyond the proper cross-examinination on anything I brought out on direct, except as he is your witness.

1139 (Last question read by reporter).

Mr. Staples: There is a double question there: the first is that you have referred to patents taken out, and the second one is as to who took out the patents. Now, answer the first question. Did you refer, in your testimony, to specific letters patent taken out, in your testimony today?

A. I did not refer to specific letters patent. Patents were issued to both C. S. Adams and A. J. Rice, together and individually.

1140 Mr. Staples: Now, I object to going into any specific patents, none having been mentioned or brought out on direct examination; and upon the further ground that, of course, this witness is not the best evidence of letters patent themselves and it would not be preferable.

Mr. Richards:

Q. I hand you copy of United States Letters Patent No. 745,752, granted to C. S. Adams and A. J. Rice, on December 1, 1903, and ask you to state whether or not that is one of the patents to which you have referred.

1141

Mr. Staples: I object to that because it does not appear that he has referred to any specific patent; and on the contrary, he says he did not refer to any specific patent.

The Witness: I did not refer to that specific patent.

Q. Well, do you recognize that patent?

Mr. Staples: That is objected to as incompetent, immaterial and not proper cross-examination. It has no bearing on this case whether this witness recognizes something that we have not brought out; and for the further reason that the letters patent themselves are the best evidence on anything material to this suit.

1142

A. I do.

Mr. Richards:

Q. Who are the C. S. Adams and A. J. Rice mentioned in that patent that I have handed you?

Mr. Staples: All questions in reference to the printed letters patent are objected to, as they themselves are the best evidence.

1143

A. They were the same two men who started the Rice & Adams Corporation.

Mr. Richards: Copy of the patent referred to by the witness is offered in evidence and marked Cross-exhibit No. 11.

Mr. Staples: That is objected to as not proper cross-examination and not the proper order of proof. I have no objection to your marking it for identification, but it is no part of the record.

1144 (Copy of Patent No. 745,752 granted to C. S. Adams and A. J. Rice, under date of December 1, 1903, referred to, marked by Examiner as Cross-Exhibit No. 11 of this date).

Re-direct examination by Mr. Staples:

Q. Mr. Adams, Mr. Richards referred to the description that you gave of the washing machine
1145 in the Sable tin shop, in 1902, as having been made when the model was before you. You gave the description in answer to my question before I referred to this model; but I wish to ask you whether the description that you gave of it, before I referred to the model, was clear in your own mind without respect to the model at all. Do you personally and definitely remember ever seeing it in Sable's tin shop in 1902?

Mr. Richards: Objected to.

A. Yes.

1146 Q. Do you definitely place this as 1902 instead of 1903?

A. Yes, I place it definitely in 1902 because in the spring of 1902 we moved to Buffalo, and it was immediately after we moved to Buffalo that this machine I spoke of was built in the Sable tin shop; and I began going to high school here in Buffalo in 1902.

Q. Do you remember how long Rice & Adams were on Erie Street, in Buffalo?

A. One year.

1147

Q. Do you know what year that was?

A. That was in 1902.

Q. At the time that you saw this machine?

A. At the time that machine was made there.

Q. Where is that Rice & Adams' Shop on Erie Street, in reference to the Sable tin shop that you referred to? Where is it located?

A. You are confused there. We did not have any shop except the one at the Sable tin shop. It was one and the same.

1148

Q. Was Rice & Adams on Erie Street at one time?

A. Rice & Adams had this machinery built in the Sable tin shop, and whatever office there was there was right there in the Sable tin shop. Is that what you mean?

Q. I want to know what the facts are. Did Rice & Adams have a place on Erie Street or didn't they?

A. No.

1149

Q. Did they have a place near the Sable tin shop?

A. Not at that time.

Q. Well, before that time did they have a place near the Rice & Adams shop?

A. In 1902 the only place the Rice & Adams Corporation had for manufacturing this equipment was at the Sable tin shop; and in 1903 Rice & Adams had a place of their own, which was right around the corner from the Sable tin shop.

Mr. Mitchell:

1150 Orlando Adams

Q. Where was that, in the Feine Block, on Erie Street?

A. Rice & Adams were not on Erie Street.

Q. Were they in the Feine Block at any time?

A. In 1903 they were at 144 Terrace. That was the Feine Block.

Q. How long were they on the Terrace?

A. A little over a year.

Q. And when did they move from there?

1151 A. They moved from there some time in 1904 —the latter part of 1904.

Q. And to where did they move?

A. They moved to 200 Terrace.

Q. And then how long were they there?

A. They were there until 1907.

Q. And then they moved to Chandler Street?

A. Yes.

Mr. Staples:

Q. In 1902 Rice & Adams were doing this construction work in the Sable tin shop, were they?

1152 A. Yes; that was the only place they had at that time.

Mr. Staples: That is all.

Mr. Richards: Motion is hereby made that all evidence offered and introduced through or during the testimony of this witness be stricken and excluded from the record herein on the ground that any of it which might be material is incompetent and inadmissable herein because of the fact that the defendant herein is precluded from attacking or contesting in any way the validity of the Blair patent in suit, the previous litigation

1153

at Chicago, mentioned above being res adjudicata as far as this defendant is concerned; and notice is hereby served upon counsel for defendant that such motion will be presented at the final hearings in this cause; and it is also desired that it be understood that such cross--examination as has been made by counsel for the plaintiff has been made without waver of any rights to formal objection to the reception of any such evidence. I think that will be all.

1154

Deposition closed.

State of New York,
County of Erie. } ss:

CERTIFICATE OF EXAMINER

I, Arthur J. Monro, a Notary Public in and for the County of Erie and State of New York, acting as Examiner in the above-entitled cause, by consent of the parties, do hereby certify that the foregoing deposition of Orlando Adams was taken before me at No. 1144 Prudential Building, in the City of Buffalo, State of New York, on the 22nd day of April, 1926; that plaintiff was represented by Clayton G. Richards, Esq., of Chicago, Illinois, and John S. Powers, Esq., of Buffalo, New York, and that the defendant was represented by Frederick G. Mitchell, Esq., and Charles J. Staples, Esq., of Buffalo, New York; that the said witness was by me duly sworn before beginning the taking of his deposition, that the signature of the

1155

1156 Minutes of Trial

witness to said deposition was waived by counsel under stipulation appearing on page 2 herein; that the said deposition was taken by me in shorthand and subsequently transcribed into typewriting under my direction, and that I am not connected by blood or marriage with any of the parties to this controversy nor directly nor indirectly interested in the outcome thereof.

Witness my hand and official seal, at Buffalo, New York this 24th day of April, 1926.

1157 Examiner.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP, Plaintiff,
vs.
RICE & ADAMS CORPORATION, a Corporation, Defendant.
In Equity No. 793-D.

1158

Minutes of Trial, before Hon. John R. Hazel, U. S. Justice presiding, at the Federal Building, Buffalo, N. Y., May 6, 1926, commencing at 10 A. M.

APPEARANCES:

Joshua R. H. Potts, Esq., and Brayton G. Richards, Esq. (Chicago), and John S. Powers, Esq. (Buffalo), counsel for plaintiff.

Mitchell & Staples (Buffalo), for the defendant, by Frederick G. Mitchell Esq., and Charles J. Staples, Esq. of counsel.

The Court: Are you ready?

Mr. Powers: The plaintiff is ready. I would like to move the admission of Mr. Brayton G. Richards as counselor.

The Court: Very glad to have your company.

Mr. Staples: Before the case is stated I would like to say this: The defendant had expected an expert witness to be here today, Mr. Robert Hains of Boston, who has studied this case, but in the last day or two, so that he could not change his mind, Mr. Hains has been engaged, by a previous order, in the trial of a case and, therefore, we do not wish to postpone or ask to postpone this trial, but we shall have to take the testimony of Mr. Hains by deposition. This will cause no time delay, because I want the deposition.

The Court: The other side agrees to it, I take it?

Mr. Richards: If the court please, Mr. Hains testified as an expert in another case, on this same patent, in regard to the same prior patents which are set up in the answer in this case; and, if counsel is willing, we are willing to stipulate that evidence that has been already taken in the other case, by this same witness, as an expert, into this case.

Mr. Staples: In this case we have a series

1162

of patents which were not in that case, and we have a series of witnesses showing prior knowledge and prior use—so that we must be free to take the deposition of Mr. Hains, and we are willing not to delay to take this.

The Court: They claim that they have additional testimony to prove by this witness with relation to other patents.

State your case.

1163 *Mr. Staples*: Before that, may the defendant make a formal motion, preliminary to this trial, as follows:

This action having been commenced on January 21, 1925, within six weeks of the expiration of the plaintiff's patent, March 3, 1925, and a preliminary injunction having been denied by this Court, and the Court having, upon application for such injunction, found as a fact, upon the application of the plaintiff for such injunction, that the infringe-

1164 ment claimed by the plaintiff had ceased; and it further appearing from the papers and proceedings heretofore had herein that the defendant has timely, to wit: before appearing generally herein, moved for the transfer of this cause from the equity to the law side of this court on the ground, among others, that plaintiff's preliminary motion for an injunction had been denied, and that there was, therefore, no other ground for equitable relief either prayed for or which could give this court jurisdiction in equity; and this court

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having denied defendant's application for the transfer of said cause from the equity to the law side of said court upon the grounds, among others, stated in the opinion of this court, upon the decision of defendant's said motion, that plaintiff's bill of complaint set forth equitable grounds for relief other than for injunction, to-wit, to recover an accounting for profits and damages: Now, in order to preserve its right under the Seventh

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amendment to the Constitution of the United States, which guarantees to defendants the right of trial by jury in all suits at common law where the value in controversy shall exceed $20.00, this defendant moves at the beginning of this trial that, the only issue in this case, being the following facts, to-wit, the alleged infringement by defendant of plaintiff's patent and the demand of the plaintiff for an accounting for profits and damages,—be tried by a jury impaneled by this court

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for that purpose, or at a regular law term of said court at which a jury has been duly and regularly impaneled.

The Court: What shall we do with this?

Mr. Staples: I move, as we have stated in the formal notice just made, for a trial by jury of the issues of facts, the two remaining issues of fact, the only issues before the court at this time,—and I am ready to argue it or submit—

The Court: Have you not argued this be-

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fore, and has not the court made a decision? Denied.

Exception.

Statements of Plaintiff's Case

Mr. Richards: If the Court please, this is a suit for the infringement of a patent. The bill in part is the usual bill, setting up the patent, title to the patent in the plaintiff and charg-

1169 ing infringement by this defendant. The Bill also charges—and this matter has been before this court, incidentally, and you may recall it as I state it—that there was previous litigation by this same plaintiff against the Bowman Dairy Company of Chicago, on this same patent, and that this defendant conducted and controlled that litigation in Chicago, and that there was a decree entered in the Chicago case, holding the patent valid and infringed; that the machines that were held to infringe

1170 in the Chicago case were manufactured by this defendant and are the very machines of which complaint is made herein; that the present defendant, as I said before, had entire charge and control of that litigation in Chicago, and lost that litigation—there was final judgment and decree entered against him —and this defendant, according to our allegations, which are denied—I say according to our allegations in the Bill—this defendant not only conducted that litigation in Chicago but paid a money judgment that was rendered

against that defendant over there; in other words, that this defendant has had its day in Court; this plaintiff has been put to the expense of taking depositions literally from one end of this country to the other. We will show from the records in that case that depositions were taken here in Buffalo, were taken twice I believe in Boston, taken in New York, Tonawanda, Pennsylvania, Chicago, and all over the country. The plaintiff has been put to all that expense; the matter has been thoroughly litigated; this defendant had his day in court, conducted that suit, and he now proposes to have another day in court. For that reason we allege in the Bill of Complaint that the part that the defendant here took in that Chicago suit is res judicata and constitutes an estoppel, and that the defendant here has no right to raise any defense on the merits in the case; that that has been all decided and the defendant has had its day in court and is not entitled to another one.

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Of course, we cannot tell in advance what your Honor's attitude will be on that subject, nor we cannot tell in advance, even if we knew what your Honor's attitude would be, what the attitude of some other court might be if this case might ultimately go to any, one way or another; therefore, I presume that there is nothing to do but to go ahead and try this case as an ordinary patent suit, also.

From that aspect of the case we intend to

1174 show, and I think we will show, that this Blair patent is a patent on a can-washing machine, on a machine for washing milk cans for use in these large milk-supply houses. I do not know whether or not your Honor knows it, but your Honor can readily see that in large cities there is an immense amount of milk brought into those cities every day, which is all brought in in cans, thousands and thousand of these cans coming in from all sections
1175 of the country. Those cans must be washed, and the custom is to wash them immediately as the milk is removed from them. Obviously, also, the sooner they are washed after that milk is removed, the less chance there is of contamination of the milk from souring and hardening in there and one thing and another. The machine that is involved in this case is a machine for that purpose. In general, it constitutes a long, narrow table or
1176 frame—I might call it a table; and there are mechanical means of some kind in the patent —the particular means is an endless-chain-conveyor effect so that the upper strands of the chain travel along this way, along the top of the table, and run under sprockets, and come back along the bottom,—but it is contended that that is not an essential part of the invention; only that there be some means of carrying these cans through this machine for the normal operation of the machine. Over the central part of this table is arranged a

hood, and these milk cans are dumped right into a vat adjacent to the machine, and almost by the same motion the operator can insert them in this machine, and that is the end of it, as far as the operator is concerned, because the machine takes care of the cans from there on and delivers them at the other end perfectly washed and sterile and dry and ready for returning to the farmer or dairy from whence they came. 1177

In this hood that I spoke of—— 1178

The Court: If I had a copy of the patent, probably I could follow you a great deal better.

Mr. Richards: I have here a copy of the patent.

The Court: Just continue briefly, because you will have a chance to sum up later on.

Mr. Richards: If your Honor will turn to Fig. 1 of the drawing, you will see a pretty good picture of the machine and will get a pretty good idea. In that hood that you see, or in that enclosure, there are various jets and things for drying the cans. Under that hood you will notice a vat or tank marked "Fig. 1." That vat or tank contains the washing fluids; and the steam pipes and air pipes come up through it. But those details are not important. The only thing for your Honor to bear in mind is that in that hood there are washing and sterilizing and cleansing appliances to treat these cans as they pass 1179

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through. The details, as it will presently appear, are not important.

If the court will note, at the front of the machine is pictured the milk can, "43", resting on the floor immediately in front of the machine, and a spout, "42" leading from that milk can. That spout "42" leads from what is known as the "drip saver", and that is the important item involved in this litigation, and
1181 that is the important item involved in the Chicago litigation, that drip saver. You will note that that drip saver is located outside of the hood, it is located at the entering into the machine. It consists of a pan arranged under this entry into the machine, under the place where the cans are first set on the machine and anterior to the washing operation; so that the cans that are inverted over this drip saver, the milk that has clung to the interior walls of the cans, necessarily—they
1182 are dumped hurriedly; a man cannot spend too much time on that, and in cold weather the milk has a tendency to kind of solidify on the walls, particularly if it is condensed milk or cream. That residue that is left in these cans when they are dumped drains out in this drip saver and runs forwardly, away from the washing part of the machine, and into the can 43, and is there saved for consumption. It is perfectly pure, proper milk, and the evidence shows that it is actually used for consumption and is available for that purpose.

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That also has an important effect on the washing operation of the machine itself in this way: You will note that if that drainage, we will call it, or that residue of milk left in the cans as they are dumped hurriedly by hand, if that remained in the cans it would pass on into the machine of course; it would be then washed out of the cans and down into the vat underneath. That vat contains, first, a rinsing solution, a strong lye solution, and those

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washing solutions are worth money and are used over and over again, the evidence will show. So that not only does this machine, as depicted there, save the drippings of milk but also saves the washing fluids in the machine itself from contamination by the milk. In other words, in one end the machine saves this milk, and the evidence will show that it saves large quantities of this milk. The actual evidence and the necessary inferences from it will show that the machine made under this

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Blair patent has gone into extensive use in this country and has literally saved thousands and thousands of dollars worth of milk. One instance in evidence will show that where this machine was used in one plant for a part of one afternoon, it saved $54.00 of cash money in milk out of one set of cans that were being emptied in peculiar circumstances — in that case it was condensed milk and on a cold day. We do not contend that it saves $54.00 every day—but in that particular plant, on that

1186 particular day, this device on one of these machines involved in this patent saved $54.00, in one day. The evidence shows that it has been doing that for years and years all over the country. That is one of the things which led Judge Carpenter to sustain this patent.

Briefly, what we claim for this patent, is this: That it is a patent on a combination of elements so arranged and coordinated together, including a drip saver and a washing

1187 mechanism of some kind, and the drip saver so incorporated and arranged with the washing mechanism that, as a part of the normal, ordinary, continuous operation of the machine the drippings from these cans are saved and preserved uncontaminated by any of the washing fluids—you see that these washing fluids are strong lye solutions, and the slightest drop or spray from them into this milk would render it unfit for human use; so that

1188 the milk is saved uncontaminated and fit for human use; and the inclusion of these same drip savers is kept away or eliminated from the washing fluids themselves. So that it saves in two aspects: It saves the milk itself, also saves the washing fluids; all as part and parcel of the normal operation of the machine.

There are prior patents. Of course, your Honor knows that in every patent suit I ever had anything to do with there are a lot of prior patents. In this case there are some sixty odd patents set up by the defendant. I

suppose that they will claim that every one of them anticipates this invention. I expect that your Honor must have had experience that in many cases that your Honor has tried in your long experience on this Bench, as a general rule the more patents a defendant sets up in his answer, the weaker his case is. If he has one patent, that is enough, he does not have to set up this whole raft of patents; or if he picks out a dozen, that would be ample. Instead of that, here he has sixty odd patents for your Honor to consider and for this expert to discuss, I presume, when any one of them, if it filled the bill, would be enough. The conclusion I submit, without going into detail, is that the very fact that they have got so many is proof conclusive that they have not got any, when one would be enough.

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We would like to direct your Honor's attention at this time to this: The defendant will bring before you drip savers. We are not claiming that Blair invented broadly a drip-saver to save drippings from anything, or from milk cans, as far as that is concerned. The Patent Office cited drip savers against this and cited a drip saver that will save the drippings from a milk can. We are not claiming that he discovered broadly that; we are not claiming that Blair discovered, broadly, the use of an automatic washing machine or mechanism; but we are claiming—and I think your Honor will know that before we get very

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1192 far with this case—that that combination of elements in a concrete, continuously-operating machine, whereby a drip saver is incorporated in it, and is part of a continuously-operating machine; that is, it is not a separate stand or anything like that, it is part and parcel of a continuously-operating machine; and the whole organization is such that the machine will operate ordinarily rapidly, continuously
1193 and efficiently and will save these drippings from the cans as a part of the normal and continuous operation of the washing machine itself; also will prevent the contamination of the washing fluids in the washing machine by the drainings and the drippings from the cans that are being washed.

The defendant will be able to show the court, as I said before, that drip savers were in use—for instance, there was a certain pat-
1194 ent cited by the Patent Office, in which a stand was provided; it was not a machine, it was a mere stand; and an operator could take a milk can, dump the milk out of it, and put it over this stand. This stand had a basin or drain which they will claim was a drip saver, which the Patent Office first thought was a drip saver, and there are certain jets and valves arranged on that stand.

The Court: Don't you think you ought to hasten to take the testimony, and then you can explain all these matters?

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Mr. Richards: I want your Honor to understand.

The Court: I think that I do understand it.

Mr. Richards: In other words, I want your Honor to understand, before we go into the testimony, that we are claiming a combination not the isolated elements; we do not claim a drip saver by itself, nor a washing mechanism by itself.

The Court: All right. What is the new result by the combination?

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Mr. Richards: The new result is that the combination, as stated, operating as a combination, produces a continuously operating washing machine, which operates rapidly, continuously and efficiently and saves these drippings from the can, uncontaminated by the washing fluid.

The Court: Were all those things done by separate instrumentalities before?

Mr. Richards: Yes, as far as I know.

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The Court: Separate cleansing machinery, separate drip-machinery?

Mr. Richards: Well, this one that I started to explain to your Honor was not quite that, because they worked together in a way. It was a stand, the one I am speaking of, Stubbs' patent, cited by the Patent Office, was a stand, on a machine, as we claim, and the cans were put over that and first rinsed. There was an arrangement made so that when they were first rinsed, supposed to be clear water, the

1198 rinsing could run out of the milk can, and that would save the drippings. This was turned around in such a way that the washing fluids could be injected into it; but there was no attempt to save the drippings from the cans as such. Not only that, but the drippings that were saved were contaminated by washing fluids, they were mixed with the washing fluids. That is the point that I make—that this Blair patent as, we contend, covers
1199 broadly that combination of the savings of the drippings of the cans uncontaminated by the washing fluids, and also prevents contamination of the washing fluid by the drippings. It is sort of reciprocal.

The Court: That is the result that you claim?

Mr. Richards: Yes. We claim that the defendant will not be able to point to any such incidents in the prior art.

1200 I think that that will give the court a pretty good general idea of what this litigation is about, and will be ample for an opening statement.

I wish at this time to state, for the benefit of the reporter, and on the record, that it is stipulated by and between counsel for the respective parties that Messrs. Monro, Munson and Jenkins 307 Liberty Building, Buffalo, New York, be employed as reporters to report the following:

The Court: Just put it in the record.

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(Stipulation above referred to, appears below, as ordered by the court to be placed in the record):—

Stipulation Re Reporters

"It is stipulated, by and between counsel for the respective parties, that Monro, Munson & Jenkins, 307 Liberty Building, Buffalo, New York, be employed as reporters to report the following case; that they furnish under this stipulation one copy 1202
of the minutes thereof to counsel for plaintiff, one copy to counsel for defendant and one copy to the Court; that the cost of reporting this case and furnishing the above transcript will be borne equally by each side and paid upon submission of bill of the reporters, and that such payment by each side may be taxed as costs."

The Court: Do you wish to say anything, Mr. Staples?

Mr. Staples: Yes, your Honor.

The Court: Do it briefly, please. 1203

STATEMENT OF CASE BY DEFENDANT.

Mr. Staples: In this case the issues raised here are denied; every element that the plaintiff seeks is traversed and there is a specific denial as to the privity about which counsel has spoken. It will appear, if necessary by proof, that Rice & Adams were not privity in that case and did not have control of the case that they referred to in Chicago. In addition

1204 Statement of Case by Defendant

to that it will appear that there is specially pleaded by the defendant actual knowledge and use of the invention in 1902, here in Buffalo. There are those two points that will appear of issue, I think, in this case:

First, so far as the machine is concerned, in its practical application—Buffalo is a center; pioneer manufacturers were here; Buffalo is a practical manufacturer of dairy apparatus, and the whole matter developed in

1205 taking care of dairy apparatus between about 1899 and 1908, when this patent was on, and it developed largely right here, it developed from the change of conditions when, instead of selling milk around from the cans, it was sold from bottles, etc.

As to the privity, I wish to say just a word as to what will be shown by the defendant to establish that Rice & Adams in this case are not privity, in any sense, to the case in

1206 Chicago. The burden, of course, upon an issue of privity is upon the plaintiff. The Plaintiff has not yet, by any kind of competent proof, shown anything establishing privity at all. Now, the proof that is brought is insufficient because it does not show that Rice & Adams had control of the case. I would like to call your Honor's attention to what appears in the record of the case, from which it appears clearly that when the suit was started in Chicago it was started against a distributor of milk who handled the machine.

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Rice & Adams, ever since away back in 1890, have been selling all over the country equipment for handling milk, and it sold much equipment to the Bowman Dairy Company, and they were made defendants—two defendants were named, the Bowman Dairy Company and Rice & Adams as manufacturers. Rice & Adams immediately applied to the Court in Chicago to be excused as parties defendant, not wishing to be bound in any 1208
respect in that case. That was contested and the Court excused the Rice & Adams Company so that they were not parties in the case. However, having done business with the Bowman Dairy Company, and knowing that here in Buffalo it had manufactured these machines away before the date of the patent to them, distributed here, Rice & Adams were anxious to do everything fairly that it could, without being made a party or being made privity in that case. When the case was started in 1209
Chicago, the Bowman Dairy Company, an independent concern to the Rice & Adams Company in this case, appeared by an attorney, who has had charge of that case continuously and who is in court here today. So that if the question of privity comes up here it can be rebutted by the man absolutely in control from start to finish. It is true that Rice & Adams Company had no "yellow streak" in that case; it manufactured many machines; it made a machine in 1920, and the machine

1210 that they describe is 1922, and nothing appears as to whether or not it is the same machine. We didn't go into that. We have our factory and our business here, and we did everything we could in the way of saying "Get your patent lawyers; as a matter of fact, we furnished the money so that they could get patent lawyers; but we have had no control of the case. Finally, when there was

1211 an interlocutory decree entered of infringement in that case, and before there was a final judgment which could be res judicata in any respect, demand was made on the part of the Bowman Dairy Company that they stop litigation and that they would not appeal. We haven't had any chance of appeal or had any control of the case whatever; we haven't been in any position to settle the question; there was no privity, and Rice & Adams were not privity in that case.

1212 I call your Honor's attention to the fact that this patent is an aggregation of general things, merely an aggregation of things that were done by farmers and dairymen — the most obvious things in the world—and a great deal said with reference to some marvelous result which was accomplished. Very well. Fortunately we find—and, by the grace of circumstances, some within the last month or two—definite proof. Right here in Buffalo, on the Terrace, there was prior use and knowledge; and up on Allen Street we find a drip-

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pan arrangement and the obvious things that men would use, without any idea of invention, throughout the country. Now, what is this Blair Patent? What are the dates of the Blair Patent? Your Honor will see that the Patent itself was granted in 1908; that application was made in 1906; that the patent expired on March 3d of last year. The suit was started six weeks before. What is the patent for, in simple words—the only kind that I could give your Honor in a patent case? It was for a machine of some kind, to wash what? On all the claims your Honor will see that it is the broadest kind of a thing that they are going to wash; "receptacles" is one of the words; receptacles of various types are to be washed. There may be some confusion in this lawsuit that this is just a milk machine we are trying to get up against, and hold it to some little part of that kind. That would be broad enough for our purpose if your Honor understands that those receptacles—under the term "receptacles of various types"—included in fact a receptacle such as a fruit can, milk bottle or milk can; it would cover it all.

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There is just one feature that they are going to show, and they show it in their pleadings, and it is the only thing they talk about in their proof, and that is this: "A drip-saving device." Look at it. It is merely a patent for milk to drop into and go to the lower

1216 end of it and go through a spigot into a pail. That is the device originally emphasized, and it is set out in the complaint that that is the chief thing. Your Honor will see that while this is an aggregation of a series of elements put up in large words, that they are not proving anything except this drip-pan and some kind of a mechanical device to which a drip-pan may be immediately attached.

1217 Now, what is the art? In 1906 there was a milk-can washing machine made by Mr. Hood in Boston. The application on it was March 1, 1906, prior to the application of the Blair patent, which was December, 1906. What did that have? It possessed all the elements of the Blair patent except two. What? An endless chain, on which these receptacles of various kinds were taken to the washing machine. As to that element, Rice & Adams never had it. The positive proof of the plaintiff in

1218 Chicago is that that element was not there. We have never had any endless-chain carrier. They don't claim we had it. That is an element of the Blair patent. That Hood machine in 1906, in practical operation, had all except that endless chain and one other, a drip pan—"the device of a drip-pan." That is the patent which was actually used, the drip-pan, in the City of Buffalo, in 1902.

These pioneers, the Rice & Adams people, on Allen Street, in the City of Buffalo, conducted a dairy going away back into 1890

1219 called the "Hygienic Dairy" or "Attica Dairy," on Allen Street, as I say. We will show your Honor that they built the can-washer on The Terrace, and that on the can-washer there was a drip-saving device, the very thing they talk about in 1902, and it was manufactured and sent down to Boston and Philadelphia and sent to Nova Scotia in 1902.

Another thing. In that same year, 1902, in August, Rice & Adams, the defendants in this action, manufacturing these machines, made 1220 application for a patent on a machine that they had already constructed for the purpose of washing receptacles of milk, bottles, as distributed from the milk cans; and that washer which was applied for in 1902 was identical to the Blair Patent in suit, with just two exceptions: First, an endless chain, the one which I mentioned before, which Rice & Adams never had; second, on this milk-bottle washer, a drip-pan. The patent did not say a word in 1902 about a drip-pan; it was not 1221 considered, as the testimony shows, as anything inventive at all, but just ordinary common sense, to save milk if you could keep it off of the floor. We never tried to use it for human welfare because we did not think it was fit, but some people would use it for pails, and it was necessary to keep it off of the floor. While we did not mention it in the patent in 1902, in the lawsuit, we have dairymen here, in our business prior to 1902, who will say

1222 Statement of Case by Defendant

that they never bought a machine like that; and, going back to 1896, there was always a drip-pan used, although it was not mentioned in the patent in 1902.

Now, in 1900, right at the time they were really developing this matter, Rice & Adams manufactured a bottle filler. Instead of the bottles going through inverted, in position to be washed out of this scum that Mr. Richards
1223 has spoken of, this is where the bottles set up straight and come under a tank of milk, and the milk is dropped down by a mechanical device. In 1900 Rice & Adams, in this city, had an arrangement, the only difference in the process being the shape of where the bottle is—whether you shove up the bottle into it or let the milk come down through; a very similar process to the machine; looks alike enough so that you will have to distinguish; the difference being that in passing the bottle
1224 through the machine in one case it is to be filled, and in the other case it is putting the bottles in the machine so that the bottles can be washed out. That machine, manufactured by Rice & Adams in 1900, had all the mechanical aggregation that there is in the Blair patent, with one exception, as to the moving mechanism not being a continuous carrier. Rice & Adams had not a continuous carrier. They had a moving mechanism in 1900, which is precisely the moving mechanism that all parties were using since, and that is shown in

the proof to be the mechanism that was used in Chicago; and Mr. Lathrop, the plaintiff in this action, instead of using the element of a continuous carrier, which is one of the essential elements mentioned in each one of these claims, swears that he has used the intermittent movement. There is no question in this lawsuit, and won't be, or shouldn't be, as to the means going into equivalets, for the reason that I find both of them are entirely old. So that the only thing that should come up in this case is the question of this drip-pan and the prior use, etc. of it. 1225 1226

Now, this bottle-filler of 1900, manufactured by Rice & Adams, is significant in that it, described in the patent, had the very drip-pan-saver in combination, although later on they have not mentioned it in the patent, but in those few years, from 1900 to 1904, we will have Mr. Rice here, showing the competency of Rice & Adams, and showing exactly that they used the very same thing. 1227

There was another patent of 1899.

The Court: I don't think you ought to go over all these patents now and take up so much time, because we will have to do it later on.

Mr. Staples: I was bringing out, just briefly, that instead of a hundred patents there were four or five.

I will only say that we are not privity in that case, and we have manufactured, and there has been knowledge of all of these mat-

1228 Statement of Case by Defendant

ters, public and common, and in use in the City of Buffalo, prior by many years to the application of the Blair Patent.

The Court: That is splendid and—I hope later on, when the testimony is before me, that you will discuss all these apparatus with clearness and significance. But I think that both sides have sufficiently explained their cases. Let us take the testimony.

1229 *Mr. Richards*: If the Court please, from the statement that has been made by counsel for the defendant it appears that there is going to be a sharp conflict, possibly, in the evidence that will be adduced here before your Honor; and I want, therefore, to ask for an order excluding witnesses.

The Court: That is rather unusual in this jurisdiction and in this State. Where is there any authority, in a civil case, for the exclusion of witnesses?

1230 *Mr. Richards*: I presume it is in the discretion of the Court. It seems that where, as in this case, there is to be a sharp conflict in the testimony as to minor details, it would be better that the witnesses didn't hear each other testify.

The Court: Are you willing to do that?

Mr. Staples: On the question of privity I, would like Mr. Herriott, who is a member of the Bar in Chicago, who had control of this case, be present and hear what is said, because he wants to go back on an afternoon

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train. As to the other witnesses, I have no objection.

The Court: Very well. All witnesses, except Mr. Herriott, may be excluded during the taking of the testimony.

Mr. Richards: If the Court please, there was a batch of testimony taken by way of depositions at Chicago, which is on file here, with the exhibits identified therein, including the testimony of Clarence Edward Threedy, 1232
Charles McEwen, Richard Dunker, Walter H. Balsam, George E. McFadden, and Harry D. Lathrop; and I wish to offer in evidence at this time those depositions and the exhibits identified therein. I am assuming that it will not be necessary to actually read them word by word; I think that in the course of discussion—

The Court: Were these depositions attended by the other side or what?

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Mr. Richards: Yes.

The Court: Received in evidence. Better mark the depositions Exhibit 1.

(Depositions, taken at Chicago, on behalf of the plaintiff, of Clarence Edward Threedy, Charles McEwen, Richard Dunker, Walter H. Balsam, George E. McFadden and Harry D. Lathrop, together with the Exhibits identified therein, marked in evidence Plaintiff's Exhibit 1.)

1234 Statement of Case by Defendant

Mr. Staples: Objections made through the depositions will be considered of the same force and effect, and the motions to strike out will be considered, as made in open Court here?

The Court: Yes.

Mr. Richards: We have the usual stipulation in patent causes, that the ordinary printed copies of patents may be received in evidence; and I therefore, under that stipulation,
1235 offer in evidence copy of the Blair patent in suit, and ask that it be marked Plaintiff's Exhibit No. 2.

The Court: Received.

(Copy of Blair Patent in suit marked in evidence Plaintiff's Exhibit 2.)

Mr. Staples: I ask that the filing dates as shown upon those patents, for the applications for the patents, as shown on those cir-
1236 culars, be considered also as the correct dates in other words, the date of application—

The Court: There is no testimony to be given antedating the application?

Mr. Staples: I wish, when they are entered under the date stipulated, that the patent should be received in evidence, that also the date of the patent, as shown on the printed slip, be considered—I ask that the date shown on the application, on the printed slip, be understood to be the date when the application for that patent was made.

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Mr. Richards: That is included in the stipulation.

The Court: That is part of the patent?

Mr. Richards: I have also got copies of certain office actions that were taken by the United States Patent Office during a certain application for the Blair Patent, and I offer same in evidence, being identified respectively as "Plaintiff's Exhibit No. 30" and "Plainti's Exhibit No. 31."

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(Certain office actions, taken by United States Patent Office in connection with Blair Patent, considered in evidence as Plaintiff's Exhibits 30 and 31, respectively.)

Mr. Richards: For the information of the Court, I wish to state that I suggest that the same Exhibits that are introduced here and in the Chicago case could be considered under the same Exhibit Numbers, so that there will be less confusion.

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The Court: So ordered.

Mr. Richards: Also, under the stipulation mentioned, I offer in evidence copy of the Van Gilder Patent, and ask that it be marked Plaintiff's Exhibit 25.

The Court: So marked.

(Copy of Van Gilder Patent, marked in evidence Plaintiff's Exhibit 25.)

Mr. Richards: That Exhibit 25 was also marked in the Chicago case.

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Statement of Case by Defendant

In the original Chicago case there were certain original documents signed by the parties, which were included as Exhibits, and those copies were copied into the record itself, every time, in connection with the depositions themselves; so that the record now shows a complete record of those documents; and I ask for an order at this time to permit the withdrawal of those original documents, in view

1241 of the fact that they have been reproduced in the record.

The Court: Granted.

Mr. Richards: I also offer in evidence at this time certain depositions which were taken on behalf of the plaintiff at Boston, being the depositions of Jesse A. Holcomb, Jackson C. Thing, Frank S. Gardyou, Thomas Prayne and James R. Blair; also exhibits identified therein, that are now on file in this Court.

Mr. Staples: We were not present when

1242 the Boston depositions were taken, and I have not had a chance to examine them. I would like to reserve the right to call the Court's attention to any objections that may be obvious to me.

The Court: Received, subject to objections to be made later on by the other side.

Mr. Richards: I might state at this time, in order to avoid confusion later, that these depositions I have just offered are in part prima facie and in part rebuttal, but there is no convenient way to distinguish between

1243

them here. I am offering them all at this time. They need not be marked at this time because they are already marked.

Mr. Potts: I have heretofore conducted this litigation. It seems necessary that I should testify, and I therefore beg leave now to withdraw as counsel in this case, and Mr. Richards will take my place. I will ask, at the same time, that Mr. Brayton G. Richards be substituted as counsel.

1244

The Court: That is satisfactory to the Court. So ordered.

Joshua R. H. Potts, called by the plaintiff, and sworn, testified as follows:

Direct-Examination by Mr. Richards:

Q. What is your business?

A. Attorney and Counsellor-at-Law.

Q. Where are you located?

A. Chicago, Illinois.

1245

Q. What connection, if any, did you have with certain litigation which transpired in the United States District Court, for the Northern District of Illinois, Eastern Division, in a suit entitled "Harry D. Lathrop, plaintiff, against Bowman Dairy Company, a corporation, defendant, In Equity No. 2239?"

Mr. Staples: If your Honor please, that is objected to, and all questions in reference to any suit other than this one are objected to, that may be asked, on the grounds that they

1246 Joshua R. H. Potts

are incompetent, immaterial at this time and not binding, and not shown to be binding in any way, upon the defendant, Rice & Adams Corporation.

The Court: I understand that this is merely a question for the purpose of laying the foundation of an endeavor to show that this defendant was privity to this other suit.

Mr. Richards: Certainly. It is one of the issues in this case.

1247 *The Court*: Overruled.

Mr. Staples: Exception.

A. I was attorney of record and I actually conducted the defense from the beginning to the finish.

Q. I hand you a document and ask you to state, if you can, what that is?

A. That is the original Exhibit No. 4 of the plaintiff, introduced in the case of Harry D. Lathrop against Bowman Dairy Company, in the

1248 United States District Court at Chicago.

Q. That is the Chicago case that we have talked about?

A. Yes.

Q. In which you were attorney?

A. Yes.

Q. As I understand your testimony, that is one of the original exhibits?

A. That is the original Exhibit No. 4.

Q. What does that Exhibit 4 show?

Mr. Staples: If your Honor please, I tried to make the objection in the beginning broad

1249 enough so that it covers all matters, and I am objecting to all of this matter, which we claim is incompetent, irrevelant, immaterial, as having nothing to do with a case of which we are parties, as shown by the evidence.

The Court: I understand that this is merely preliminary to an endeavor on the part of the plaintiff to show that this defendant was privity to the other case, and that it was really the actual defendant; but this question

1250 is objected to because the document speaks for itself; there is no necessity of counsel telling you what is printed there.

Mr. Richards: I wish to prove by this witness that this document discloses the machine that was held to infringe in the Chicago case —and I take it that in this case is material. Your Honor should know what machine it was that the Court over there held to infringe.

The Court: No doubt.

Mr. Staples: It has not been before us at

1251 any time.

The Court: But I think that I ought to receive that.

Mr. Staples: Exception.

A. That is a circular of Rice & Adams, showing the identical machine that was involved in this Chicago case, also the machine that is involved in this case.

Mr. Staples: Objected to, and I ask to strike it out as a conclusion. It is evidently hearsay.

1252 *The Court*: Yes, I think that is a conclusion. I think that he may describe the machine that was involved in the Chicago case, and he may describe the machine involved in this case. It is for the Court to make comparisons, if any are to be made. Strike out the answer.

A. (Cont'd) This circular shows a can-washing machine, with a drip-saver at one end.

1253 *Mr. Staples*: Objected to on the ground that the circular shows for itself.

The Court: Objection overruled. He is called as an expert on this subject.

A. (Cont'd) and the first three cans nearest receiving end of the machine are being drained; and, as the next can is placed on the machine, it pushes those three one step forward, and the fourth then enters the machine, and the next one is being drained; so that the first three cans are being continually drained over the drip-pan during the

1254 operation of the machine. I saw a machine as nearly identical as possible with this shown in cut that I speak of in the Bowman Dairy Company plant on Fifth Avenue on the 29th of April, 1921.

Mr. Staples: May I interrupt to ask that the conclusions of the witness be stricken out? We object, and ask to strike out all the comparisons of this witness and conclusions made, which are the province of the court.

The Court: You can describe this Bowman machine that you saw.

A. (Cont'd) The Bowman machine that I saw

1255

in operation had a hood, through which cans passed over a track. It had a track extending out at the receiving end, under which there was a drip-saver; leading the milk away from the machine, which was running into a milk can sitting under it. At the time that I saw this machine it was in operation, a stream was running out of it about the thickness of a good-sized lead pencil, continuously. The cans were pushed through the machine by a reciprocating movement, riding on a track; the hood enclosed the washing parts of the machine, so that that part inside of the machine could not be seen.

1256

Q. How, if at all, was that machine marked or identified which you saw on that occasion operating in the Bowman Dairy Company plant?

Mr. Staples: Objected to as incompetent, irrelevant, immaterial, and the marking not concerned in any way in the machine.

The Court: What do you mean by the "marking?"

1257

Mr. Richards: There was a name plate on that machine, as I understand, and I want the witness to identify the machine.

Mr. Staples: That would not show anything about the mechanism of the machine or—

The Court: It is received as a means of identification, as part of the machine.

A. (Cont'd) The machine had a name plate on on which were the words—I will have to refresh my recollection on it; I made a memorandum at the time. (Refers to memorandum.) It said

1258 Joshua R. H. Potts

"Rice & Adams Corporation, Manufactures of Milk Machinery, Buffalo, N. Y., U. S. A."

The Court: Were there any interrogatories in this case?

Mr. Richards: Yes.

The Court: It would seem to me that a number of these things should have been disposed of by suitable interrogatories.

Mr. Richards: Yes, there were interrogatories.

1259

The Court: Didn't they admit that there was such a machine that the Bowman Company manufactured? Didn't you ask them?

Mr. Richards: Yes. They answered that question.

The Court: It seems to me that a number of these questions should have been propounded prior to the trial, and perhaps some, if not all, answered.

Mr. Richards: They came in here, and in

1260 that answer they modified their answer.

Mr. Staples: We do not touch this matter in any amended answer.

The Court: Well, eliminate as much as you can.

Mr. Richards: I offer that exhibit in this action and I ask that it be marked Plaintiff's Exhibit 4-A.

Mr. Staples: I object to that as no proper foundation yet being laid that we are bound by in any respect.

The Court: No, but I will receive it at this

1261

time, subject to its being stricken out later on.

(Rice & Adams Circular, showing machine, marked in evidence Plaintiff's Exhibit 4-A.)

Q. I also hand you another document, containing a blueprint, now marked Plaintiff's Exhibit 8, a catalog now marked Plaintiff's Exhibit 6, and another catalog, now marked Plaintiff's Exhibit 5, each of said Exhibits being entitled in Lathrop against the Bowman Dairy Company suit. Will you please state, if you know, what those three documents are?

1262

Mr. Staples: This is understood as being under the same objection.

The Court: Very good. We will have it included under the same objection, and the Court will receive it.

A. The document that is marked Plaintiff's Exhibit 8 is a blueprint of the original drawing made by Clarence E. Threedy, under my direction, of the receiving end, showing the drip-saver on the milk-can-washing machine that was in operation at the Bowman Dairy plant on Wentworth Avenue on the day that I visited the plant with Mr. Threedy.

1263

Q. I understand that that was the original exhibit that was in the Chicago suit that has been talked about?

A. Yes. That is the original exhibit, and since that suit was concluded these exhibits have been in my custody.

1264 Joshua R. H. Potts

The document marked Exhibit 6 is the original Plaintiff's Exhibit in the Bowman Dairy Company case, showing a Rice & Adams catalog and the machine in question in that suit.

Plaintiff's Exhibit 5 is another part of that same catalog.

These exhibits, after the suit was settled, were returned to me and they have been in my custody since that time.

Mr. Richards: The three documents that
1265 have been identified by the witness, I now offer in evidence, to be marked in this case Plaintiff's Exhibits 8-A, 6-A, and 5-A, in the order mentioned.

The Court: Received.

(Blueprint of original drawing, made by Clarence E. Threedy of the receiving end of machine, showing drip-saver on milk-can-washing machine in operation at Bowman Dairy Company Plant, etc., marked in evi-
1266 dence Plaintiff's Exhibit 8-A.)

(Rice & Adams catalog, showing machine in question in Bowman Suit, marked in evidence Plaintiff's Exhibit 6-A.)

(Another part of Rice & Adams Catalog, used in Bowman Case, now marked in evidence Plaintiff's Exhibit 5-A.)

Q. Will you please state what efforts you have made, if any, with a view of providing a certified

copy of the answer in that Bowman Dairy Company Case that we have been talking about?

A. I directed that a certified copy of it be obtained from the Clerk of the United States District Court at Chicago, by one of my associates, and I received word from the Clerk that the original answer could not be found; it had been mislaid or lost. I then went personally to the office of the Clerk of the United States District Court and, in 1268
the presence of the Deputy, asked him to get the files, and I personally examined every paper that was in the files, and the original answer was not on file, could not be found; and the Clerk refused to make a negative certificate saying that it was not on file and could not be found; he said it was against the rules to do so.

Q. Are you in a position to furnish anything that you know is an exact copy of the original answer that was filed and employed in that Bowman Dairy Company litigation that we have been 1269
talking about?

A. I am. I have in my possession the carbon copy of the original answer that was filed in the case of Lathrop against Bowman Dairy Company, the Chicago case, and which bears the stamp "Filed July 23, 1921, at (blank) o'clock M, John H. R. Jamar, Clerk"—both on the face and back of it. That carbon copy of the answer was delivered to me after the answer had been filed, and has been in my possession, in my files, since that time, up until I removed it before coming down here.

By the Court:

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Q. Whose filing mark is that?

A. That is the filing mark of the Clerk of the United States District Court. They were filed in duplicate—original and carbon copy. I asked the Clerk, in view of that stamp, whether he could certify this carbon copy, and he said he could not because it was not the original but a carbon copy.

Q. Did you examine the records?

A. The Docket records show that the answer
1271 was filed.

Q. But, as to the judgment roll itself?

A. They don't copy their pleading in the record.

Q. Don't they make up a roll?

A. No, just a memorandum. We have a certified copy of all the record shows, to introduce.

By Mr. Staples:

Q. May I see it?

A. Yes. (Witness hands paper to the defendant's counsel.)

Mr. Richards: I offer in evidence, as Plain-
1272 tiff's Exhibit 32, the document identified by the witness.

Mr. Staples: Same objection.

The Court: Overruled.

Mr. Staples: Exception.

(Carbon copy of original answer filed in case of Lathrop against Bowman Dairy Company, in Chicago, bearing stamp "filed July 23, 1921 at (blank) o'clock, M, John H. R. Jamar Clerk," marked in evidence Plaintiff's Exhibit 32.)

1273

Mr. Richards: I offer in evidence certified copy of the Motion to amend the answer, including the amendment to the answer, and ask that it be marked Plaintiff's Exhibit 33. This is certified by the Clerk.

I also offer in evidence at this time certified copy of The Docket Entries in the Bowman Dairy Company suit, and ask that it be marked Plaintiff's Exhibit 34.

The Court: Received.

1274

(Certified copy of Motion to amend the answer, including the amendment to the answer, certified by the Clerk of the District Court, in Bowman Dairy Company suit, marked in evidence Plaintiff's Exhibit 33.)

(Certified copy of Docket Entries in Bowman Dairy Company Suit, in Chicago, marked in evidence Plaintiff's Exhibit 34.)

1275

By Mr. Richards:

Q. In the conduct of the Chicago suit against the Bowman Dairy Company, that we have been talking about, did you have any correspondence or communication with the attorneys representing the defendants in that case?

A. I did.

Q. Have you that correspondence with you?

A. I have part of it.

Q. Will you please state what that correspondence consists of that you have there?

A. It consists of letters and telegrams received

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by me through the mail or in the usual course of telegraphing. A communication between Parker & Prochnow, Ellicott Square, Buffalo, N. Y., and Mitchell & Staples of Suite 1144 Prudential Building, Buffalo, N. Y., and communications from Montgomery, Hart & Smith, 959 The Rookery, Chicago, Illinois,—most of which—I think all of them—were signed by Mr. Herriott, who acted as local counsel at Chicago.

1277 *The Court*: You are endeavoring to give testimony relating to correspondence with attorneys in this case, not that case.

Mr. Richards: The attorneys in that case were the same as the attorneys in this case.

The Court: I beg pardon.

Mr. Staples: We object to it.

The Court: Who were the attorneys for the Bowman Company in the Illinois case?

Q. Who was the attorney for the Bowman Dairy Company in the Illinois case?

1278 A. Mr. Herriott, Parker & Prochnow and Mr. Bean of that firm, and Mitchell & Staples.

Q. I notice that you have there also some yellow documents. Please state what those are?

A. Those are letters that I wrote the attorneys, carbon copies of them.

Q. Please state, if you know, how those carbon copies were reproduced or how or what relation they have to the originals?

A. They are identical carbon copies, made on the typewriter by the stenographer, in the usual course of business.

Q. As I understand you, they were made by the same mechanical manipulation that made the originals? 1279

A. Yes.

Q. In other words, these are the duplicate copies of the corresponding letters?

A. They are.

Q. There are some signatures on those letters. Will you please state, if you know, whose those signatures are?

A. On some of them are the signatures of Frederick G. Mitchell; on others of Irving Herriott; others are signed Mitchell & Staples — I don't know who wrote them. One is a copy of a letter addressed to Mr. Herriott by Mitchell & Staples, which Mr. Herriott sent to my office; that is April 7, 1924. The telegrams are typewriten copies and they bear the typewritten name of Parker & Prochnow. 1280

Q. As to those telegrams, what are those actual pieces of paper that you have there?

A. Wait until I see whether I have something else. The telegrams are all signed by Parker & Prochnow and are the actual telegrams that were delivered at my office. I find one telegram signed "Mitchell & Staples." 1281

Mr. Richards: I offer in evidence the bunch of correspondence as one exhibit, to be marked now Plaintiff's Exhibit 35.

The Court: Is it necessary to have all these letters?

Mr. Staples: In addition to my other objec-

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tion, without looking at these letters, I submit that they are incompetent, obviously letters between attorneys, also obviously speaking for themselves and, in addition, being of a confidential nature between counsel for the attorneys in the Bowman Dairy Company.

The Court: I never knew correspondence of that kind to be confidential.

Mr. Staples: I think it is incompetent, irrelevant and immaterial. As a matter of fact—

1283 so that your Honor may see—as friends of the Bowman Dairy Company.

The Court: I will receive it, subject to your objection. If there is anything wrong, you can show it as confidential communications, and if you are able to show me authority to that effect, I will withdraw them; but, as it stands, I think they have some bearing upon the plaintiff's claim that they were privity and the case was tried and you participated in it.

1284 You, on the other hand, contend that you were not privity; simply that you took a passive interest. I am unable to say now, but I will receive them subject to what I have said.

The Witness: Can they be copied into the record?

Mr. Richards: At this time I would like to have the record show that I, acting as counsel for the plaintiff, waive any objection that there might be to the witness disclosing these as confidential communications between him and his client.

1285

The Court: Very well.

Mr. Richards: I also ask that, without reading these letters at this time, the reporter be instructed to simply copy them at length into the record, so that we will have a permanent record of them in this record, in the order of their dates.

The Court: It is agreeable to me.

Mr. Staples: It seems to me that it is a bill that is unnecessary, whether it is competent at all, or not, I presume that anything that we have ever written we have a copy of.

1286

The Court: How about having these letters transcribed by the reporter?

Mr. Staples: I object to it. I don't want to pay for a whole file of letters.

The Court: I don't think it will be necessary. File them, and they will be regarded as exhibits. When the case is over you can have your letters back, they will be sent to you by the Clerk, by order of the Court.

1287

The Witness: The trouble is that they may be lost.

The Court: Maybe the other side will be willing to pay this full expense.

Mr. Staples: I suggest that we merely refer to the date of the letter, and we can have copies of anything verified.

Mr. Mitchell: I think that we have copies.

Mr. Richards: If Mr. Staples will withdraw his objection, the plaintiff will undertake to pay for this additional cost, for the inclusion

1288 into the record.

The Court: Is that satisfactory?

Mr. Staples: It is satisfactory, if he wishes to pay for it.

The Court: Very well. Copies will be recorded by the stenographer, at the expense of the plaintiff.

Mr. Staples: That is not waiving my formal objection.

1289 (Copied at end of testimony—see Index.)

Q. Is there anything else, that you know of, or that you can think of, that might have been material in this proceeding?

A. At the taking of the

The Court: That is a very broad question, don't you think?

Mr. Richards: I will limit it, then.

Q. I understand that there were certain depositions taken in this Bowman Dairy Company suit. Is that right?

1290 A. There were.

Q. Who attended the taking of those depositions?

A. I did, on behalf of the plaintiff.

Q. Who, if anybody, was present at the taking of these depositions on behalf of the defendant?

A. Mr. Bean, of the firm of Parker & Prochnow, was present at the taking of all the depositions on behalf of the plaintiff, also on behalf of the defendant. At the time that we took depositions in Boston they had us there twice. Mr. Stevens was introduced to me as Vice-President and Sales

Manager, of Rice & Adams, and was present actively, getting the witnesses and consulting with counsel for the defendant, continuously during the taking of those depositions. The defendant took depositions in New York City twice, and the same Mr. Stevens was present there and actively assisting in bringing in the witnesses, telephoning for witnesses, and consulting with counsel during the taking of the depositions. 1291

Q. Were there depositions taken in Buffalo?

A. There was a deposition taken in Buffalo, at the Office of Parker & Prochnow, and Mr. Adams was there that morning—he was introduced to me as Mr. Adams of the Rice & Adams Corporation. I think they said that he was the president. 1292

By Mr. Staples:

Q. Was that in this action?

A. No, in the Bowman Dairy Company's. I had a conversation with him at that time, and he said that the litigation had cost the firm a lot of money, and there was some talk about settlement, but we never were able to get together. 1293

By Mr. Richards:

Q. Were there depositions taken at Chicago?

A. Yes. The depositions that were taken at my place there. There was a gentleman there from Rice & Adams' Office. His name has slipped my mind for the moment.

Q. To refresh your recollection—was it McFadden?

A. Yes, Mr. McFadden was there. He was employed by Rice & Adams. He introduced himself

1294 as being employed by Rice & Adams, at that time, in the Chicago Office. He was sitting with counsel for the defendant, Mr. Bean, and consulted with him during the taking of depositions, and he was making suggestions.

By the Court:

Q. How do you know he consulted with him?

A. I saw him and heard him.

Q. You heard him talking about the case?

1295 A. Yes.

By Mr. Richards:

Q. Was there more than one hearing in this case before Judge Carpenter at which you were present?

A. The case came up before Judge Carpenter a number of times, and one time before Judge Paige. On this occasion the plaintiff had taken depositions in Boston, and in New York, and they came in for an extension of time, to reopen the case, to take further depositions, to which I ob-

1296 jected—that was before Judge Paige—and Mr. Herriott was present. I complained to Judge Paige about their having taken us to Boston twice to take depositions, as a reason why it should not be reopened, and Mr. Herriott stated at that time that he was merely acting as local counsel and this litigation was being conducted by Rice & Adams of Buffalo, from whom they had purchased the machine, and they had some agreement with them that they were to save the Bowman Dairy Company harmless and, as a result, they had control of the litigation, and that he or his firm had no

1297

discretion about the matter. Then, again, the case was set for hearing before Judge Carpenter for final argument.

The Court: I don't think that this should be binding on the defendant unless it goes farther and shows that they actually authorized Mr. Herriott to make such statements.

Mr. Richards: The record shows that he was the attorney of record in that case.

The Court: For the Bowman Dairy Company?

1298

Mr. Richards: Yes, he was attorney of record—well, the testimony of this witness also shows that he was representing Rice & Adams also. He represented Rice & Adams, I know—he represented the Bowman Dairy Company, primarily; but the record shows that he also represented Rice & Adams.

Mr. Staples: The record will be the best evidence.

The Court: How do you know?

1299

Mr. Richards: The testimony of the witness.

By the Court:

Q. What do you say about that?

A. Mr. Herriott, several times, in conversation, told me that Rice & Adams

Q. But were Rice & Adams there?

A. No, they were not there.

Mr. Staples: I ask to strike it out.

The Court: I don't think that at this stage of the case I should hold Rice & Adams re-

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sponsible for what Mr. Herriott said in court on a motion for a continuance, in the absence of Rice & Adams, unless you connect the defendant in some way with that incident or show that Mr. Herriott really was acting as Counsel for the defendant here.

By Mr. Richards:

Q. Are there any facts, to your knowledge, to show that Mr. Herriott acted for Rice & Adams Corporation in that litigation?

1301 A. When the case was set for final argument before Judge Carpenter, on a day certain, Mr. Parker, Mr. Mitchell, Mr. Staples and Mr. Herriott and myself appeared that morning, and Judge Carpenter said that he could not hear the argument at that time. At that time Mr. Adams was introduced to me again and Mr. Orlando Adams, if I remember correctly the first name—he was present. Judge Carpenter suggested that the case be submitted on briefs. I agreed to that, and

1302 either Mr. Staples or Mitchell or both of them said that they would consult their client; and they all got off together, Mr. Herriott, Mr. Staples, Mr. Mitchell and I think Mr. Parker and Mr. Adams, and they had some conversation between themselves; and they finally agreed to submit it on briefs; and they filed a printed brief with Judge Carpenter, and I filed a typewritten brief.

By the Court:

Q. Who asserted a final agreement?

A. Mr. Adams was there of the Rice & Adams Corporation.

1303

Q. What did you hear him say?

A. I did not hear him, but he was present.

Q. What did you hear his counsel say?

A. I heard his counsel say that they did consult with their client and then they had a conversation, and then they agreed to submit the case.

The Court:

That is a conclusion.

A. (Cont'd) Mr. Staples I think was the one who said to Judge Carpenter that they would submit it on briefs.

1304

Mr. Staples: I did not say it.

Mr. Richards: I think that that is enough to indicate some connection between all these attorneys and this defendant, and it is enough to put them

The Court: Without passing on the fact, it seems to me that

Mr. Staples: This is all under my objection, which I will not repeat.

A. (Cont'd) After Judge Carpenter had had the case under advisement for several months, his Secretary called me up and asked me

1305

Mr. Staples: Is this binding on Rice & Adams?

The Court: Objection sustained.

By Mr. Richards:

Q. Was there any further hearing in the Bowman case, before Judge Carpenter?

A. There was a final oral argument.

Q. How did that come about after Judge Car-

1306 penter had stated the case was to be submitted on briefs?

A. Judge Carpenter requested, and Mr. Herriott said, that he would have to consult the attorneys for Rice & Adams, as he could not argue it, he was not familiar with the case. Mr. Herriott stated to Judge Carpenter at that time that Rice & Adams were conducting the defense and he did not know anything about the merits of the case in any way and could not argue it, and he would have to consult with the Rice & Adams attorneys at Buffalo; and there was some delay; and then afterwards Mr. Herriott called me up and we went over before Judge Carpenter again and agreed on a date for oral argument, and Mr. Bean, of the firm of Parker & Prochnow, came to Chicago, and I argued it on behalf of the plaintiff, and Mr. Bean on behalf of the defendant.

1307

Q. Who else was there beside Mr. Bean on behalf of the defendant?

1308 A. Mr. Herriott was there. I don't think he took part in it.

Mr. Staples: When you said "on behalf of the defendant" did you mean the Bowman Dairy Company?

Mr. Richards: They were the only defendant then.

Q. Is there anything else that you recall?

A. After that we went into the question of figures, and anything that was submitted to Mr. Herriott, he always said he was only acting as local counsel and he had to submit it to the attorneys

of Rice & Adams before he could agree or disagree, and then he would communicate with me after he heard from them. 1309

Q. About these letters and telegrams that you have previously identified, what, if anything, did you do about those in connection with your client, Mr. Lathrop, the then plaintiff?

A. My client was kept posted all the way through the litigation, each step. I either read him a copy of it or sent it to him or read it over the telephone. 1310

Mr. Richards: That is all.

Cross-examination by Mr. Staples:

Q. You did treat with Mr. Herriott as attorney of record in the Lathrop against Bowman Dairy Company case?

A. Yes.

Q. You recognized that he was the attorney of record in charge of that case? 1311

A. He was one of them.

Q. Didn't he state — on deliberation — that Parker & Prochnow and Mitchell & Staples were counsel for Mr. Herriott?

A. I don't recollect that. Their names were to all of the stipulations. I don't think Mr. Herriott signed any of the stipulations. If my recollection is correct, they were signed by either Mr. Parker personally or Parker & Prochnow or Mr. Bean— I think most of them by Mr. Parker.

Q. In the case originally in Chicago, you as

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attorney for the plaintiff made Rice & Adams of Buffalo a party defendant, did you not?

A. I did.

Q. And thereafter application was made for a dismissal of the suit as against Rice & Adams, in that case, was it not?

A. On the ground

Q. Yes or no?

A. There was, on the ground that they had no established place of business in the District.

1313 Q. And you opposed that motion, did you not?

A. I did.

Q. And the Court granted an order excusing Rice & Adams in that case, did it not?

A. Dismissing them from the suit for want of jurisdiction.

Q. At that time, before Rice & Adams were excused, Mr. Herriott and his firm in Chicago were the attorneys of record for the Bowman Dairy Company, were they not?

1314 A. They were.

Q. And thereafter, upon any stipulations or decrees or notices, the formal notices, such as decree and service of decree, was served on Mr. Herriott, or Mr. Herriot's firm in Chicago?

A. Some of them were, and some were served on Parker & Prochnow. I know that the correspondence and the arrangement for the dates, I think, were made direct with Parker & Prochnow, as shown by the correspondence and the telegrams.

Q. For instance, in your final decree, you took pains to have that okayed by Mr. Herriott, did

1315

you not — you have attached that to your complaint? You saw Mr. Herriott and showed him the final decree in this case, didn't you?

A. I nearly always communicated with Mr. Herriott, and Mr. Herriott in turn always told me to wait until he had consulted the Buffalo attorneys.

Mr. Staples: I ask to strike it out as not responsive.

The Court: Strike it out.

The Witness: It is an explanation.

1616

The Court: Strike it out.

Q. Did you or did you not, on May 13th, submit a copy of the final decree to Mr. Herriott?

A. I would not recollect without something to refresh my recollection as to the exact dates.

Q. Was not the suit settled by Mr. Herriott because were you not paid by Mr. Herriott with the check of Mr. Herriott's firm?

A. I was.

Q. And were you not delivered that check prior to the entry of the final decree?

1317

A. I couldn't say without records.

Q. Were you not told, at the time you were paid by Mr. Herriott, that the money was for the settlement of all the proceedings, or words to that effect?

A. I was told that he received the money from Rice & Adams in settlement of that decree.

Q. The question I ask you is

A. You asked me what he told me.

Q. All right—for the settlement of what decree had Rice & Adams sent it to you?

1318 Joshua R. H. Potts

A. There was only one decree.

Q. What was that?

A. The decree in the Chicago case.

Q. Which one? There were two decrees in the Chicago case, were there not?

A. There was an interlocutory and a final decree.

Q. Was not the interlocutory decree of January 21, 1924, the only decree in this case at the time
1319 Mr. Herriott paid you the money to settle the proceedings?

A. Well, I think it was done simultaneously. The decrees were okayed.

Q. I asked you whether or not you received a check from Mr. Herriott before?

A. I wouldn't say that I did. I think we did it simultaneously.

Q. Did you prepare the final decree in that Bowman Dairy case?

1320 A. It was prepared in my office, as I recollect.

Q. You supervised it before it went out?

A. Yes.

Q. At the same time you prepared the final decree in your office, did you prepare a satisfaction of that final decree?

A. I think so.

Q. At the same time you prepared that final decree had you not already prepared, in your office, under date of May 12, 1924, a license from Mr. Lathrop, the plaintiff, to the Bowman Dairy Company—yes or no?

1321

A. I don't remember without something to refresh my recollection.

Q. You may have so prepared it?

A. I have no recollection of it.

Q. Did you ever prepare a license from the Lathrop Company to the Bowman Dairy Company?

A. I have no recollection on it without refreshing my recollection.

Q. Do you wish to refresh your recollection?

1322

A. No. Have you got anything that would refresh it?

Q. Haven't you all of the records in this Court concerning the matter of Lathrop against the Bowman Dairy Company?

A. I don't think so. I have a stack that high (indicating about three feet) that I did not bring with me.

Q. You have had charge of all that matter, however, for the Lathrop Dairy Company?

A. Yes.

1323

Q. Didn't you know that the settlement you made with the Bowman Dairy Company, Mr. Herriott, involved the giving of a license to the Bowman Dairy Company, to dairymen in Chicago?

A. I think it does come back to me now, after reflection, that we licensed him to continue the use of the particular machine that had been held to be infringed, that they had bought from Rice & Adams during the life of the patent; but I am not positive about it; I just have a faint recollection

1324 of that. I could easily tell if I had my records all here.

Q. Before the entry of the final decree, alleged in the complaint as May 13, 1924, you had had talks with Mr. Herriott and others about granting a license?

A. I had many talks with him.

Q. You had had talks about granting a license, had you not?

A. Yes.

1325 Q. And you had had talks about settling the case as it then stood, had you not?

A. Yes, several times.

Q. And as the case stood before May 13th, 1924, there was merely an interlocutory judgment, was there not?

A. Until the date the decree was entered—the decree will speak for itself; I don't remember the exact date.

Q. You obtained and filed the interlocutory de-

1326 cree of Judge Carpenter, dated January 21, 1924, did you not?

A. I filed it. I don't remember the date without looking it up.

Q. Did you make the final decree and follow the words of Judge Carpenter in his interlocutory decree of January 21, 1924, or not?

A. The decrees will speak for themselves. I don't remember.

Q. Didn't you, as a matter of fact, include a statement that the machine was manufactured by Rice & Adams?

1327

Mr. Richards: I object to this further line of cross-examination. The decrees are in the record, and he is cross-examining him as to the differences between those decrees. The decrees are there and speak for themselves.

The Court: On cross-examination counsel has a right to draw out his recollection of them.

Q. I will withdraw the question and will ask you another one in order to have it clear before you.

1328

Didn't you, in the final decree, made after the license to the Bowman Dairy Company and the receipt of the money therefore,—didn't you file a final decree?

A. Yes, there was a final decree filed. We allege it in our bill.

Q. In that final decree did you or not insert words relating to the Rice & Adams Corporation?

A. I don't know, without consulting the decrees?

Q. You don't remember that yourself?

A. No.

1329

Mr. Staples: Get me a copy of the original bill on which this final decree is made to Mr. Potts.

Mr. Richards: I will, if we have it.

Q. Do you know whether, in the interlocutory decree of Judge Carpenter, dated January 21, 1924, there was any reference whatever made by Judge Carpenter to the Rice & Adams Corporation?

A. No, I don't remember whether or not there

1330 was. I remember Judge Carpenter spoke of it at the time he rendered his decision.

Mr. Staples: I ask to strike out anything except Rice & Adams.

The Court: Strike it out.

Q. Did you, when you saw Mr. Herriott, after he had given you a check of his firm in settlement of your suit against the Bowman Dairy Company, have any talk with Mr. Herriott about the final de-

1331 cree being different in substance from the interlocutory decree of Judge Carpenter?

A. I submitted the decree to Mr. Herriott for approval. He told me he had to take it up with the Buffalo attorneys first, and I think there was some little delay about it.

Q. As a matter of fact, did not Mr. Herriott, when you handed him the final decree, say "What is the use of having a final decree when we have settled this case"—words to that effect—yes or no?

1332 A. Not to my recollection.

Q. As a matter of fact, did you not say "This is simply a matter of form," or words to that effect?

A. I don't think I did.

Q. And, as a matter of fact, while you were in the office with this final decree, did you not take it away with merely an O. K. on it of Mr. Herriott's, without his stopping even to read the formal part of the decree—yes or no?

A. No, I don't think so.

Q. It may have been so, may it not?

1333

A. As a matter of fact.

Q. Wait a minute. You are merely a witness here. I ask you to look at the final decree and I ask you if in that final decree there is or there is not the words "Rice & Adams"?

A. Yes, there is. It speaks for itself.

Q. Now I ask you just one other question. You had charge of this whole case, didn't you—you had charge of the interlocutory decree yourself?

A. I have said so at least ten times.

1334

Q. Kindly look at the interlocutory decree of your file, and I will ask you just one question: Is there, in the interlocutory decree of Judge Carpenter in the Lathrop against Bowman case, the words "Rice & Adams"—yes or no.

A. In the decree that you show me here it is mentioned.

Q. Now, Mr. Potts—

A. I am looking at the decree.

Q. Isn't that the final decree that you are just looking at—yes or no?

1335

A. I am looking at the decree that you handed me.

Q. All right. I am asking you again if you have not before you the same decree that you said "Yes, there is Rice & Adams in it," the final decree, which says "Final Decree" at the first of it?

A. Perhaps so. This is May 13th.

Q. Just a minute. Didn't I ask you, in all fairness, to take your record and turn—

A. You didn't ask me to turn.

Q. I ask you to turn to the interlocutory de-

1336 Joshua R. H. Potts

cree of Judge Carpenter, made in January, 1924, in the Bowman case, that you had charge of—do you find it?

A. On what date?

Q. The interlocutory decree of Judge Carpenter in your files. Your partner, Mr. Richards, says it was just before the final decree.

A. What date?

Q. Your partner said it was the document just before the final decree, but I think it is January
1337 21, 1924.

A. Just a minute, until I read it.

The Court: Look it over.

A. (Cont'd) No, sir, it is not in that decree.

Q. Your answer is no, to that, is it?

A. Yes.

The Court: We will suspend until 2 o'clock.

—RECESS UNTIL 2 P. M.—

2 P. M., after recess.

1338 Present: Hon. John R. Hazel, U. S. District Judge presiding.

APPEARANCES:

Same as before noted.

Joshua R. H. Potts, recalled for further examination, testified as follows:

Mr. Staples: The defendant does not wish to ask anything more of Mr. Potts.

Re-direct-examination by Mr. Richards:

1339 Q. You have been examined somewhat at length about the circumstances that led up to the entry of this final decree. Is there anything in the correspondence that you have there that has a special bearing on this, that you can think of?

A. Well, the correspondence between the attorneys, Mr. Staples and Mr. Mitchell and Mr. Herriott, and the open manner in which the defense was conducted all the way through by Rice & Adams, during the entire litigation—it was the 1340 natural thing that their name would be mentioned in that decree; and, if there was any error made, it was made in leaving it out of the interlocutory decree.

Q. Is there any letter there that you could read to the court at this time that would give the court a pretty good idea about the part that Rice & Adams bore in this litigation?

A. In the very first letter that I ever received from Mr. Parker, dated May 27, 1921,—Parker & Prochnow—addressed to me, it says: "Dear Sir: 1341 In the matter of the bill filed by Harry D. Lathrop against our client, Rice & Adams Corporation and Bowman Dairy Company, have you an extra copy of the Bill that you can let us have? If it is not convenient for you to do this, we will be obliged if you will let us know at once so that we can obtain a copy from the Clerk of the Court. Very truly yours, PARKER & PROCHNOW."

Then, after the interlocutory decree had been entered, I had a conference in my office, that lasted nearly all day, with Mr. Mitchell—I don't remem-

1342 Joshua R. H. Potts

ber the date of it—of Mitchell & Staples, with reference to the settlement, and he said that he was representing Rice & Adams; and during a conversation I had with Mr. Herriott, I think I suggested to him after the interlocutory decree had been entered, that they only had such a few machines that it would be cheaper for them to settle the matter rather than appeal; and they said at that time that they had an agreement with Rice & Adams to save the Bowman Dairy Company
1343 harmless from any litigttion, and that the Rice & Adams Company had control of the litigation—as part of that agreement—and it would be up to them, that it was not up to him or the Bowman Dairy Company to decide. Under date of April 14, 1924,—and this letter was received in the mail in the usual course, either one or two days afterwards—I received a letter signed "Mitchell & Staples," and addessed to me, which says:

"Dear Sir: Mr. Herriott—"

1344 *The Court*: You have arranged to have these letters copied, this morning, so that I don't think you care to have it in the record again, do you?

Q. Will you read a few pertinent paragraphs?

A. (Reading):

"Mr. Herriott, of Chicago, has just reached me by 'phone upon my return from Washington after an absence of a week, and advises me that you are pressing a decision in the Bowman Dairy Co. case.

1345

"Owing to the severe illness of Mr. Parker with pneumonia, some misunderstanding arose by which this firm was not advised of the decree in the case until March 21st. It had been our understanding prior to that time that no reference or accounting had been ordered. It was, therefore, with the greatest surprise that we learned of the decree on the date mentioned. The writer immediately endeavored to get in touch with Mr. Parker's office, but because of Mr. Parker's illness and 1346
in the absence of Mr. Bean, it was impossible to get any information until a week later.

"Meanwhile the writer had important engagements in Washington which required his attention. Mr. Orlando Adams was drawn on the jury and his father lay critically ill at his home, thus preventing any of the parties from getting together.

"We asked Mr. Herriott to learn from you the exact amount which you would accept in 1347
settlement of the case and to give us a general release. Mr. Herriott gave us the amount of your costs but did not state the amount you would accept in damages. We authorized him to advise you that, if the amount of damages and costs were at all reasonble, we would be inclined to advise a settlement rather than to appeal, but if there were any considerable amount of damages sought, we would take an appeal from the final decree as soon as it is entered.

1348 Joshua R. H. Potts

"We have been unable up to this writing to carefully examine the decree or to investigate the result of the decision, and the pressure of cases which our office has been trying in our Supreme Court has made it impossible for any other member of our firm to take up the case until today.

"If you will write or wire us at once the total amount you will accept in full settlement of this case in your district and the terms of
1349 settlement, we shall consider it and advise you whether we shall settle or appeal.

"If the case is to be appealed, it is our understanding that evidence as to the value of the infringement before a Master will have to be taken, and we would, in that event, prefer to stipulate the amount, if we can agree upon it, rather than to take any testimony.

"You may be assured that if the amount involved is considerable, we shall appeal the
1350 case, because we are advised and believe that the decree cannot stand and the circumstances under which it was granted by Judge Carpenter are sufficient evidence to us that the case was not properly considered by the District Court. However, that may be, we are not seeking to incur additional expense to our client, if a settlement would result in the saving of that expense.

"We have advised Mr. Herriott that if you cannot await a proper negotiation between us, we shall proceed at once to appeal, or at least

as soon as the decree can be entered, and we shall continue to fight this case at whatever cost there may be to our client or incenvenience to ourselves. 1351

"The fact we are acting at long range makes it difficult to hurry the matter, and you should take this into consideration.

"We are sending a copy of this letter to Mr. Herriott, and should like to have you get in touch with him and continue your negotiations with him in order to save time. It is 1352
solely a matter of expediency and cost, as we really do not care anything about your client's patent.

"We understand that there are five machines in possession of the Bowman Dairy Co. which have been using the drip-pan feature affected by the decree, but we do not know what claim of damages you may make, and we think you will save time and effort if you will either communicate directly with Mr. Herriott or ourselves, giving us the final fig- 1353
ure you will accept for a general release in this case, so far as the decree affects machines in your district. We understand, of course, that you will not release your claim in any other district.

"We should also like to know what license you would require for the machine, if the Rice & Adams Corporation should care to continue its use.

Yours very truly,
MITCHELL & STAPLES."

1354 Defendant's Motion for Non-Suit

Q. Will you please state whether or not, to your knowledge, any motion or other proceedings has ever been taken by the Bowman Dairy Company or anybody else to modify or vacate or set aside that final decree that was entered by Judge Carpenter in the Chicago case?

A. Never to my knowledge.

Mr. Richards: That is all.

Mr. Staples: That is all.

1355 *Mr. Staples*: I notice that the witness, Mr. Wright, is in court, and he knows nothing about this case except as to manufacturing it for the Dairy Company. I would like the courtesy of having him sit here, if you have no objection.

Mr. Richards: That is all right.

This is our prima facie case, for the plaintiff.

The Court: Then all your witnesses may come into court.

1356 **Defendant's Motion for Non-Suit**

Mr. Staples: May it please the court: I appreciate that your Honor has not had opportunity to read these depositions, but this is the time for us to make a motion for a non-suit.

The defendant moves for a non-suit on the ground that the plaintiff has failed to present facts sufficient to establish a cause of action for infringement of the Blair patent in suit; and for the further reason that the defend-

1357

ant has failed to show that any machine was manufactured by the defendant Rice & Adams, which possessed in combination all of the elements specified in any one or more of the claims of the Blair patent in suit. Further, that the plaintiff's proof, has described definitely, on an alleged infringing machine, only a drip-pan-saver or milk-saving device in combination with other apparatus, indefinitely describing, without clear proof of any of the several elements specified in any one of the claims of said Blair patent in suit. Further, that the plaintiff's affirmative proof shows that on the alleged infringing machine in Chicago the untensil-moving mechanism was different and other than in the form of a carrier such as specified as an element in each claim of said Blair patent in suit.

1358

The Court: Motion denied.

Mr. Staples: And for the further reason that there is no proof in the case of the plaintiff showing ownership of the patent in suit by the plaintiff.

1359

The Court: I have had no occasion to examine or read any of the depositions, and, therefore, I must deny your motion at this time and give consideration to these matters later on.

1360 Irving Herriott

Defendant's Case

Irving Herriott, called by the defendant and sworn, testified as follows:

By the Court:

Q. Are you the Mr. Herriott that we have been speaking of?

A. I am.

1361 *Direct-examination by Mr. Staples*:

Q. You are an attorney and counsellor-at-law, practising your profession in the City of Chicago, Illinois, are you not?

A. Yes.

Q. Are you acquainted with the Bowman Dairy Company?

A. I am. They are clients of the firm of which I am a member.

Q. How long have they been your clients?

1362 A. More than 25 years.

Q. What is the name of your firm?

A. Montgomery, Hart & Smith.

Q. Do you recall an action brought by Harry D. Lathrop in Federal Court, in your Chicago district, on account of an alleged Blair patent?

A. I do.

Q. What was your relationship, if any, to that law-suit?

A. When the case was started, our clients, Bowman Dairy Company, referred the matter to me, and we, handling all their business, arranged of

1363

course to take care of their interests in that case. The Rice & Adams Company was a joint defendant, and I recall that your office asked me to represent the Rice & Adams Company on a motion for a dismissal of Rice & Adams Company out of the case.

Q. Did you in that suit represent Rice & Adams Company for any other purpose than the motion you have just referred to, of dismissal?

A. That is all.

1664

Q. I show you a certified copy of Judge Carpenter's Order of September 29, 1921. What is that?

A. Certified copy of the order which was entered by Judge Carpenter on my motion, after argument, dismissing the suit as to Rice & Adams.

Mr. Staples: This is offered in evidence as Defendant's Exhibit No. 7.

1365

(Certified copy of order of Judge Carpenter of September 29, 1921, considered in evidence as Defendant's Exhibit No. 7.)

The Witness: I might say that I appeared specially for Rice & Adams—

The Court: What is the paper, again?

Mr. Staples: Order of Judge Carpenter dismissing the Rice & Adams case.

The Court: Inasmuch as it is conceded by the other side, is it necessary to have this in the record? It checks up, I suppose, etc.

1366 Irving Herriott

Mr. Staples: All right. We will withdraw that on the Court's suggestion.

Q. From that time forward, or at any time was the control of the Bowman Dairy Company, as a defendant in that lawsuit, in the hand of any attorney other than your firm and yourself?

A. Not that I know of. I know that I was responsible to my client for the outcome of that lawsuit.

1367 Q. Were you paid in part by the Bowman Dairy Company for your services?

A. Yes, I was. My firm is on a regular retainer from the Bowman Dairy Company, under which we handle all litigation and legal matters from them. I was also paid some by Mitchell & Staples of Buffalo.

Q. What was the relationship between your firm and yourself and Mitchell & Staples, as attorneys, in the Lathrop against Bowman case?

1368 A. If I understand your question, my firm of Montgomery, Hart & Smith, were the attorneys for the Bowman Dairy Company. Mitchell & Staples of Buffalo, and Parker & Prochnow of Buffalo were counsel in the case. I might add, at the risk of perhaps talking too much, that no member of my firm is a patent attorney, we do not handle patent litigation, and Parker & Prochnow were retained as patent counsel in the case.

Q. Were you in fact ever acting as local counsel in the City of Chicago for anybody in this Lathrop lawsuit other than making the special motion for dismissal of Rice & Adams as parties?

1369

A. I would say that if by "local counsel" you mean merely a local representative of some attorneys elsewhere, no. We are the chief attorneys for the Bowman Dairy Company.

Q. Were you in the court-room this morning when Mr. Potts testified?

A. I was.

Q. Did you hear him state the conversation alleged to have been had between you and him in which he stated that you said to him "You were only local counsel"?

1370

A. There were several conversations, as I recall it, in which he made that statement.

Q. You heard him make it in reference to several of the meetings you had with him?

A. Yes.

Q. I ask you did you ever state to Mr. Potts, in those words, or words to that effect, that you were only local counsel in the case of Lathrop against the Bowman Dairy Company in Chicago?

A. I don't recall ever making such statement, and in view of my relations with the Bowman Dairy Company I don't see how I could ever have said any such thing.

1371

Q. You also heard the conversation in reference to the final decree, conversation with you?

A. I did.

Q. I wonder if you recall the day when the final decree was even mentioned by Mr. Potts to you and just what did take place there—can you tell?

A. I will have to preface my statement with a statement to the effect that I had had negotiations

1372 with Mr. Potts looking toward a settlement of the issues in the Lathrop case, and I had received from Mitchell & Staples in Buffalo two checks—I don't remember the exact amounts of them, but one was for $600 odd and one was for $80.00—which I was to use in making a settlement of Bowman Dairy Company's case. I finally agreed with Mr. Potts on the amount, and he came to my office, as I recall it, on the 13th day of May. If you would let me see my check I could refresh my re-
1373 collection, to be definite. (Witness examines check.) After looking at this check of Montgomery, Hart & Smith I would say that on the 13th day of May 1924 Mr. Potts came to my office and delivered to me a release from Mr. Lathrop and a license to my client to continue to use the machines which they have in their possession, which it was claimed infringed the Blair patent. At that time he submitted to me a form of final decree, and I recall saying to him, in effect, "What is the
1374 necessity, Mr. Potts, of a final decree in this case? We are paying you the amount of damages that you claim you are entitled to receive, and we have agreed on the amount, and we are getting a license and release from your client, and why a final decree?" As I recall it, his statement was that it was a mere matter of form. I discussed it with him for a considerable time, and I know I continued to object to it. I finally okayed the decree as to form, rather than jeopardize the settlement. I am a little embarrased now because I feel that I was quite selfish in my attitude; I was interested in

1375

the Bowman Dairy Company and I did not want this thing to drag along, I did not want the settlement to be upset, and I okayed the form of decree which Mr. Potts presented to me at that time, the day that he presented it. That is how the decree came to have my O. K. on it.

Q. Did you read that decree?

A. I don't recall whether I did or not. I hate to make that admission, but I don't recall that I read it or not.

1376

Q. You took it for granted that it was the same as the interlocutory decree?

A. To be very frank with you, I did not care whether or not it was.

The Court: May I look at the final decree?

Mr. Staples: Mr. Richards has it.

Q. I have a copy here. Can you tell what your memory is as to the date of the license from Lathrop to the Bowman Dairy Company, given by Mr. Lathrop?

1377

A. The document is dated the day Mr. Potts prepared it, which was on the 12th day of May 1924. We did not perfect our settlement until the following day, the day that I drew my check for the amount of the settlement.

Q. I show you a check, dated May 13th, 1924, and I ask you what that is?

A. That is a check payable to the order of Harry D. Lathrop for $736.82, which was the amount which I paid to Mr. Potts for the settlement of the case of Lathrop against Bowman Dairy Company.

1378 *Mr. Staples*: I offer in evidence that check as defendant's Exhibit No. 8.

The Court: Received.

(Check of Irving Herriott, dated May 13, 1924, for $736,82, payable to Harry D. Lathrop, marked in evidence Defendant's Exhibit 8.)

Q. Is that a $600.00 check?

1379 A. No, that is a check equal to the sum of two checks that Mitchell & Staples sent me; one is for $600.00 odd, and one is for $80.00. I could not settle with Mr. Potts for one of them, so I gave him both of them.

Q. To what extent did Parker & Prochnow have control of the appeal of any decrees in Lathrop against Bowman Dairy Company, so far as the Bowman Dairy Company went?

A. Neither Parker & Prochnow nor Mitchell &

1380 Staples had any control over that.

Q. Were you willing to appeal that case?

A. I was not. I refused to become a party to the appeal on behalf of my client.

Mr. Staples: You may ask.

Cross-examination by Mr. Richards:

Q. Mr. Herriott, at the hearing before Judge Carpenter, when the motion to quash service and dismiss Rice & Adams from the suit was up, you appeared solely in support of that motion and ar-

1381

gued that motion before Judge Carpenter, did you not?

A. I appeared specially for that purpose, yes.

Q. On that occasion you were representing Rice & Adams, the present defendant, and you were the only attorney present representing that de-defendant on that occasion?

A. That is correct.

1382

Q. To your knowledge, did the Bowman Dairy Company have some kind of a contract or agreement or arrangement with the Rice & Adams Company to protect the Bowman Dairy Company from the outcome of that suit?

A. I never have seen any written agreement that was in force at that time. When the case was started, when the suit was first filed, the Vice-President of the Bowman Dairy Company, in turning it over to me, said that the Bowman Dairy Company had purchased a great many machines from the Rice & Adams Corporation, and expected

1383

to purchase a great many more; and these machines ran into a great deal of money; and that he would expect the Rice & Adams Corporation to pay the expense of that litigation and to pay the amount of any judgment that might be recovered against the Bowman Dairy Company. Mr. Mitchell, of the firm of Mitchell & Staples, told me that the Rice & Adams Corporation would pay the expense of litigation and would pay the amount of any judgment that might be recovered against the Bowman Dairy Company.

1384 Irving Herriott

Q. And they did pay the expense of that litigation and they did pay the judgment?

A. Correct.

Q. It was understood between you and I and Mr. Potts and everybody connected with it, that Rice & Adams was conducting that litigation.

A. No, I would not go that far with you. It may have been understood between you and Mr. Potts, but it was not understood between you and
1385 Mr. Potts and myself. This is the fact: Parker & Prochnow, as patent attorneys, had complete charge of the preparation of the evidence in this case—I don't mean this case, I mean the one in Chicago. I attended the taking of depositions in Chicago. Mr. Potts is in error when he says that only Mr. Bean and Mr. McFadden were there. I was present in Mr. Potts' office, as you remember, and I conferred with Mr. Bean during the taking of that evidence. I had nothing to do with the taking of depositions anywhere else in the country,
1486 and I left that entirely to Parker & Prochnow, the same as I did in every patent case where I have patent counsel with me.

Q. When you rendered specific bills for specific services in that case, where the Bowman Dairy Company was defendant, who did you render the bills to?

A. The only specific bill that I ever rendered was to Mitchell & Staples because, as I said on direct-examination, The Bowman Dairy Company pays my firm a regular amount every year, in

1387

monthly installments, regardless of whether or not we do any work.

Q. A regular annual or monthly retainer?

A. That is the only charge that we make.

Q. They have a lot of business outside of this particular patent suit?

A. Some months they have a great deal, and some months not any.

Q. But, so far as any expense that can be attributed to this particular patent suit in Chicago, the money came from Buffalo, did it not?

1388

A. Well, that is calling for a conclusion.

Q. For instance, you rendered a bill for the services that you rendered when you had the Rice & Adams Company dismissed from that suit, didn't you?

A. I think I did; I am not positive.

Q. If you did, who paid it?

A. Mitchell & Staples.

Q. You understood it was coming from Rice & Adams?

1389

A. I assume that they were not paying it out of their own pockets.

Q. Who retained Parker & Prochnow, if you know?

A. I think Mitchell & Staples did. I did not retain them.

Q. When the summons was served on the Bowman Dairy Company---I presume a summons was served on them?

A. Yes.

Q. I presume it was brought to your office?

1390

A. Right away.

Q. What did you do?

A. I can't tell you definitely. I presume I called up one of the officers and asked him what it was all about, after having sent to the Clerk's office for a copy of the complaint.

Q. Did you communicate with Rice & Adams?

A. I don't think I ever had any word, any direct communication with them.

1391

Q. Did you communicate with Parker & Prochnow?

A. I had some correspondence with them. Do you mean did I initiate the correspondence?

Q. Yes?

A. No.

Q. Do you know who did?

A. No.

Q. Do you know how Mitchell & Staples or Parker & Prochnow got into this case?

1392

A. Well, I can only conjecture on that. You know that probably as well as I do. I presume that they are Rice & Adams' attorneys.

Q. What was the first communication that you recall from either Parker & Prochnow or Mitchell & Staples?

A. I think the first that I ever got was from Mitchell & Staples, in which they asked me if I would represent Rice & Adams on a motion to dismiss them out of the case.

Q. Did they say in that communication that they represented Rice & Adams?

A. I think so; I would not be positive.

1393

Q. You understood all along that Mitchell & Staples were representing Rice & Adams, did you not?

A. Yes.

Q. And that Parker & Prochnow were directly representing Rice & Adams?

A. No, I would not say that. They were patent counsel presumably retained by Mitchell & Staples to represent the Bowman Dairy Company in this case.

1394

Q. Let me refresh your recollection a little, if I can. Do you remember on an occasion appearing before one of the federal judges out there, either Judge Page of Judge Carpenter, on some matter, but I can't be definite about that, in which you stated to the judge, in substance, "Well, your Honor, I am only acting practically as office boy in this litigation, and I will have to communicate with the attorneys in Buffalo before I can decide definitely"—do you recall any such statement to the court?

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A. I am quite sure that I never made any such admission in open court, that I was acting as an office boy. I may have acted as one from time to time, but I know I never admitted in open court that I acted as office boy. I have been practising 19 years, and I have passed the office-boy stage.

Q. Wasn't there some sort of a joking remark made?

A. I understand you. I did not understand that I was acting in an office-boy capacity because, if the case went wrong, Mitchell & Staples and Par-

1396 ker & Prochnow were not responsible, I was.

Q. Do you consider that the case went wrong?

The Court: Why go into that?

A. Supposing we had been enjoined from using these machines and had to tear them out of our plant, it would cost them $30,000.00, or $40,000.00, I suppose, and it was an important piece of litigation for my client.

Q. Your recollection is that a final decree was
1397 decided upon between you and Mr. Potts on the day it was filed?

A. Yes. As I recall it now, that was the first time I ever saw it.

Q. The approval that you put on there probably was not dated; sometimes it happens that those decrees are entered a day or so after they are approved, does it not?

A. I don't know as I quite understand what you mean.

Q. I mean might there not have been time be-
1398 tween the time you approved the form of that final decree, to have submitted it to Rice & Adams or Mitchell & Staples or somebody in Buffalo, and had it come back to Chicago before being entered?

A. I can say that I did not submit it to anybody in Buffalo. That is one of the things I am a little embarrassed about because I was interested primarily in the Bowman Dairy Company, and to be extremely frank, I was not particularly interested in the effect of that final decree, and I did not want to jeopardize my settlement with Mr. Potts.

Q. That practically was about the only impor-

1399

tant paper that came to you in the whole case that you did not submit to somebody in Buffalo before taking final action at all?

A. Not at all. The license to the Bowman Dairy Company concerned the Bowman Dairy Company, and I never submitted it to anybody in Buffalo. The satisfaction of judgment which Mr. Potts gave me I never submitted to anybody in Buffalo. After I got my money from Mitchell & Staples for the settlement of this case, I did not care what became of it, if you wish to know the real facts of the matter.

1400

Mr. Powers: With the consent of Mr. Staples, I would like to continue the cross-examination.

Cross-examination by Mr. Powers:

Q. You said a few moments ago that you would not permit your client to take an appeal in this case?

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A. You did not quite get me on that. That is rather a crude way to put it. I meant that I would not permit Rice & Adams to appeal through Mitchell & Staples, or anybody else. I controlled that case, and I did not want to get involved in any appeal; I was through with it and sick of it.

Q. The decision not to appeal was arrived at after the settlement had been made and the amount of compensation determined?

A. I don't think so. I can't conceive—

Q. You said that the removal of these mach-

1402 ines would entail an expense of $30,000.00 or $40,000.00, so that I take it that if no settlement had been arrived at you would have appealed rather than go to that expense?

A. When the case had progressed to the point of the entry of the interlocutory decree, I ceased to be concerned about the possibility of my client having to take out these machines; that was a very remote possibility, anyway, and perhaps I exag-

1403 gerated it a little when I mentioned it. The only question that was in my mind between the entry of the interlocutory decree and the settlement was, first, "How much can the case be settled for"—and I want to say that I insisted upon negotiations being had for a settlement.

Q. Apropos of this question of appeal: If negotiations for settlement had not been concluded, there would have been an appeal.

A. If I had not agreed with Mr. Potts?

1404 Q. Yes?

A. I would say no, that I would have insisted upon the case being disposed of, and if Rice & Adams or Mitchell & Staples would not pay whatever was necessary to settle that case, they would not have sold any more machines to the Bowman Dairy Company.

Q. You also said that while you did not recall any specific written agreement, I believe, or were not familiar with it, at least, that you understood there was at least a general understanding by which Rice & Adams were obligated to defend on

behalf of the Bowman Dairy Company and to save them harmless?

A. I would say that they were given to understand that if they did not assume the expense of this case and pay the amount of any judgment of settlement which might be necessary, they could not hope to sell any more machines to the Bowman Dairy Company—and they were negotiating right at that time to sell them five or six other types of machines.

Q. So that they assumed the expense of the case, thereby assuming the conduct of the case?

A. They did not assume the conduct of it.

Q. After the Rice & Adams Company were dismissed as a defendant by name, their attorneys remained in the case and conducted a defense on the merits, didn't they?

A. Let us see. As I recall it, neither Mitchell & Staples nor Parker & Prochnow joined with me in the motion to dismiss Rice & Adams. I think my appearance alone was on that. Subsequently, when the answer of the Bowman Dairy Company was filed to the bill of complaint, Parker & Prochnow and Mitchell & Staples appeared on the answer as of counsel.

Q. And conducted the defense?

A. Parker & Prochnow conducted the preparation of the evidence, and Mr. Bean of that firm, or representing Parker & Prochnow, made the principal argument before Judge Carpenter. I think that I said a few words, but I was in over my head

1408 on that patent—I don't know anything about patents.

Q. This was all subsequent to the dismissal of Rice & Adams?

A. Yes, a year later, I would say.

Q. In connection with that anticipation case of Mitchell & Staples and Parker & Prochnow, were they hampered in any way by the Bowman Dairy Company as to what moves they should take?

1409 A. Well, I don't think that I hampered them.

Q. There was no interference with them?

A. I don't think I hampered them in any way until the entry of the interlocutory decree, and then I said "You fellows get rid of this case quick."

Q. Prior to trying the case on the merits they had full discretion as to what moves should be made and testimony taken?

A. They had Parker & Prochnow, counsel in the
1410 case, pick their witnesses, put in proof and arrange for depositions, and I did not interfere with them in any way.

Q. In other words, to all intents and purposes it was their case, just as though the Bowman Dairy Company had not been in it?

A. Only to the same extent that every patent case is the case of the patent counsel, because I keep my hands off the patent end of it.

Q. In the defense of that case of Rice & Adams Company, so far as the Bowman Dairy Company, —which had washed their hands and put it up to

1411

Rice & Adams,—Rice & Adams was the whole show?

A. I think that that is a conclusion that you are not justified in drawing from the facts.

Q. What did the Bowman Dairy Company do with respect to defending on the merits of the case?

A. I will tell you what I did. I went out to the plant of the Bowman Dairy Company and looked over the machines they have out there, and I looked where this drip-pan used to hang on the machines, and it had been taken off. I went into the question of the value of this device, and I learned, to my surprise, that the Bowman Dairy Company did not think it was worth anything at all—and they did not sell any of the milk that they saved and did not think it was fit for human consumption.

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Mr. Powers: I object to the voluntary matter.

Mr. Staples: I object to having it struck out.

1413

The Court: Don't you think that the witness has been sufficiently cross-examined? You are trying to establish privity, but you don't seem to be able to establish it by this witness. This witness has been on the stand quite a long time, and he was cross-examined by your associate—but continue, follow with your questions? Did you finish your answer?

A. No. I say I discussed it with Dr. Peck, Vice-President of the Bowman Dairy Company, and I

1414

endeavored to find out how seriously the Company might be affected by the sustaining of the patent. I did examine some patent authorities, and I went over with Mr. Bean some of his prior art that he had collected, and I counselled with him when he came to Chicago on two or three occasions. He always spent an hour or two in my office.

Q. The witness in the case was selected, I understand, entirely by Rice & Adams?

1415 A. Yes.

Mr. Staples: By Rice & Adams?

A. (Cont'd) They were selected by Parker & Prochnow, who were patent counsel in the case.

Q. And the brief was submitted by counsel at Buffalo?

A. The final brief?

Q. Yes?

A. It was prepared by Parker & Prochnow and sent on to me, and I think I saw the copy before it was printed.

1416 Q. And the argument on the final hearing was by Mr. Bean of Parker & Prochnow?

A. Yes.

Q. That was the condition of affairs up to the time the patent was found valid and infringed?

A. Well, the conditions of affairs—that is what has transpired up to that time.

By the Court:

Q. Who examined the witnesses?

A. The testimony was all by deposition, every bit of it.

By Mr. Richards:

1417

Q. Can you say anything more on that subject?

A. The only time that I was present when witnesses were on the stand—I remember Mr. Lathrop's associate, one of you people, made some statements that I rather questioned, and I advised Mr. Bean how he might disprove them. But Mr. Bean did all the questioning.

Mr. Richards: That is all.

Mr. Staples: That is all.

Mr. Staples: The testimony of Orlando Adams, an officer of the Rice & Adams Corporation, was taken by deposition, Mr. Orlando Adams having been ill, and it being necessary for him to leave the city. I offer the deposition of Orlando Adams, subject to all of the objections, as in the other depositions, and I merely call the attention of counsel for the plaintiff, and the stenographer, to the fact that on the index page and in the record on page 21 the stenographer failed to note the fact that an exhibit was marked, No. 7, being the descriptive circular of the Rice & Adams Dairy machinery, which was marked by the stenographer at the time it was offered in evidence.

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The Court: I see no objection to its being corrected, and the deposition received in evidence.

Mr. Staples: It was offered in evidence and it was merely neglected to be marked.

Mr. Richards: Is it there now?

Mr. Staples: Yes, and it was marked by

1420 the stenographer for the Commissioner, as Exhibit No. 7, April 27, 1926.

Mr. Richards: I have here, if the Court please, an exhibit marked "Cross Exhibit No. 11," that is identified in this same deposition of Mr. Adams, and I ask that that also be admitted in evidence.

The Court: Received in connection with that deposition.

1421 *Mr. Staples*: The testimony of Mr. Orlando Adams, briefly stated, is that when he was a young boy and started in the City of Buffalo he was employed in that place, where they were building a washing machine. He describes a drip-pan in connection with the washing-machine device that was manufactured by Rice & Adams in the City of Buffalo, and said that he had found recently the man who had made it, and that he had asked the man if he would not make a model of it; that

1422 the man had made the model, and that he remembered having worked upon it, and said that that was a fair representation of the machine which was made on the Terrace, in the City of Buffalo, in 1902. Further that in 1902 he had worked in a dairy that was owned by Rice & Adams on Allen Street, known as the Attica Dairy, and that in that dairy in 1902 they had a bottle-washing machine to which was attached a drip-saving device, which he described, being Exhibit 7, his description of the bottle filler; and that he

had also worked in 1902 in this same dairy upon a bottle-washing machine, which he described as a part of this Exhibit 7; and that that washing machine also had a drip-saving device.

I call Mr. George Sable.

Mr. Richards: At this time I would like the record to show that the plaintiff objects to the introduction of any evidence tendered on behalf of the defendant, bearing upon the merits of this case or in any way attacking the validity of the Blair patent in suit, or in any way relitigating the matters that were litigated in the Chicago suit against the Bowman Dairy Company.

The Court: Objection overruled.

George Sable, called by the defendant and sworn testified as follows:

Direct-examination by Mr. Staples:

Q. Were you ever a witness before?

A. No, sir.

Q. Have you lived all your life in Buffalo?

A. Yes.

Q. How old are you?

A. 56.

Q. Did you at one time own and run a tinsmith shop down on the Terrace, in the City of Buffalo?

A. Yes.

Q. Whereabouts was that on the Terrace?

A. Erie Street.

1426 Q. Was it a public tinshop?

A. Yes, anybody could come in there.

Q. Do you remember the number on Erie Street?

A. 140.

Q. On what floor of the building?

A. Ground floor.

Q. Did you have any name up in front of this tinshop?

1427 A. Yes.

Q. What did it say?

A. "George Sable, Tin, Copper, & Sheet-Iron Work."

Q. Could you look into that shop from the street?

A. Just like a store, double doors.

Q. When did you start in that business at that place?

A. In 1901.

Q. Did you know Mr. Rice?

1428 A. Yes.

Q. And Mr. Adams?

A. Yes.

Q. Where did you first see them?

A. I see Mr. Rice down in the shop. He came in the shop one day with some work.

Q. When did you first begin to do work for Rice & Adams in your tinshop on the Terrace?

A. In the summer of 1902.

Q. During that time, in 1902, do you remember any of the work you did for Rice & Adams, especially?

1429

A. Yes, sure.

Q. What did you do for them?

A. We built bottle-washing machines, washing machines, and things like that.

Q. Do you remember distinctly of any can-washing machine that you worked on in 1902?

A. It was in the winter of 1902-1903, I couldn't tell exactly, but it was that winter.

Q. Will you describe that kind of machine you made?

1430

A. It is right there (indicating model).

Q. This model?

A. That is the model.

Q. I show you Defendant's Exhibit 6. What is that?

A. Can-washing machine?

Q. Who made that model?

A. I did.

Q. Who asked you to make the model?

A. Mr. Adams.

Q. Did he tell you how to make it?

1431

A. No.

Q. How did you make that—on any scale?

A. We agreed upon the scale of two inches to the foot.

Q. Does that Exhibit 6 fairly represent anything that you made in your shop on the Terrace in 1902 for Rice & Adams?

A. What?

Q. Does that show fairly what you made there?

A. Yes.

Q. When did you make this model—recently,

1432 George Sable

I suppose?

A. The first week of last month, April.

Q. The machine that you actually made there, what was done with that, the washing machine you made down on the Terrace?

A. It was sent away some place.

Q. What is this at the feed end?

A. They call that a tray or drip-pan.

Q. Did you make the drip-pan?

1433 A. Yes.

By the Court:

Q. Is that what you call the drip-pan, the projection on the forward part of the apparatus?

A. This is it here (indicating).

By Mr. Staples:

Q. That is the receiving end of the washing can?

A. Yes.

Q. The cans were placed in an inverted position on the receiving end of the washing machine?

A. Yes.

1434 Q. To go through the covered washing machine?

A. Yes.

Q. Was there any other drip-pan that you made on this machine in 1902?

A. No, I didn't make any, but Mr. Rice made one and put one here. (Indicating.)

Q. Do you know what the purpose of this drip-pan was in 1902—did Mr. Rice tell you?

A. To keep the drippings from the cans.

Q. And the drippings of the cans, after they dropped out by gravity out of here, from the inverted cans, would drop down into this drip-pan?

A. Yes.

Q. And one end of the drip-pan was lower than the other?

A. Yes.

Q. At the lower end of the drip-pan was a spigot or hole or something like that?

A. Yes.

Q. Which permitted the drops to go through by gravity?

A. Yes.

Q. And underneath this spigot a tub or bucket 1436
or can was to be placed?

A. Anything you wanted—or put a hose on it.

Q. In 1902 you saw another drip-pan put on the outlet end of that, did you not?

A. Yes.

Q. And that was similar to the drip-pan on the receiving end.

A. It was a drip-pan that drained inside the pan.

Q. And that drained the water or washing fluid 1437
back into the tank where the washing fluid was before, did it not?

A. Yes.

The Court: What shifted the cans?

Mr. Staples: In this instance, the cans were shoved through by hand.

Q. As a matter of fact, you merely built this can, you did not see it used for milk?

A. No.

Q. Did you try it out with water or anything like that?

1438 Daniel A. McNamee

A. No, it never was tried out.

Q. There was a device for shifting these regularly along as fast as they were needed to be shoved along?

A. Yes, that is right.

Mr. Staples: You may ask.

Mr. Richards: No cross-examination.

The Court: We will suspend for a minute or two.

1439 (SHORT RECESS)

Daniel A. McNamee, called by the defendant and sworn, testified as follows:

Direct-examination by Mr. Staples:

Q. Have you ever been a witness in a lawsuit?

A. No.

Q. Where do you live?

A. 220 Chester Street.

1440 Q. How long have you lived in Buffalo?

A. All my life.

Q. Where are you working at the present time?

A. Packard Motor Company.

Q. Were you acquainted with Mr. Adams and Mr. Rice in their lifetimes?

A. Yes.

Q. Were you acquainted with Mr. Orlando Adams?

A. Yes.

Q. Did you once work for Rice & Adams?

A. Yes.

1441

Q. Did you once work for Rice & Adams?

A. Yes.

Q. When was that?

A. In 1902, in the fall.

Q. Where did you start to work for them?

A. On the Terrace.

Q. Are you sure it was 1902?

A. Yes.

Q. How do you fix that date, 1902, as to the time when you started to work for Rice & Adams?

1442

A. My first child was six months old at the time. I had just come back to Buffalo a few weeks previous to the time I started to work for them, and that was the first position I got after I came back.

Q. Are you able to fix the time of the year by any other event that took place, as to when you started to work for Rice & Adams?

A. It was along in September. I came back to Buffalo in August, and I started along the latter part of August or around the first of September, somewhere there.

1443

Q. How do you fix that it was the last of August you started to work there?

A. The first week I started was around Labor Day.

Q. That fixes the time when you first started?

A. Yes.

Q. How long did you work for Rice & Adams?

A. Between five and six months.

Q. You left them sometime in 1903?

1444

A. I don't remember the exact date I left them.

Q. In the year 1903?

A. Yes.

Q. After you left them in 1903 you went to some other employment?

A. Yes.

Q. When next did you see Rice & Adams after that time?

A. I never saw them, to my recollection, until I
1445 met Mr. Adams here about, I should say, three or four months ago.

Q. Did he recognize you then?

A. No, sir.

Q. Did you recall to his mind the fact that you had worked with him before?

A. Yes.

Q. And that you had worked with him down on the Terrace?

A. I recalled to his mind the fact that I had
1446 worked for his father and Mr. Rice on the Terrace.

Q. Did you happen to be working on the Terrace at the time any kind of a machine was being made, and worked on that machine on the Terrace, for Rice & Adams?

A. Yes.

Q. In what place of business were you working? Do you remember whether there was any other business there?

A. Lobee Pump Company was in the same room. We had one corner of a big room, where we built these machines, with milk-bottle boxes.

Q. Do you recall a can-washing machine that was there?

A. Yes.

Q. Have you seen any model or anything of that can-washing machine?

A. Yes.

Q. Do you remember it distinctly enough so that you could make a picture of that can-washing machine, indicating how it looked to you, from memory, at the present time?

1443

A. I can give you an idea.

Q. Just do it on that piece of paper. Stand up and draw it, if you wish?

A. (Witness draws pencil sketch as directed.)

The Court: Is that drawing the same as the model?

Mr. Staples: He has not seen the model yet.

Q. You have drawn a picture on this yellow sheet. Does that fairly represent your memory of what you saw on the Terrace in the City of Buffalo, along in September, 1902?

1449

A. Yes.

Q. You have drawn an oblong object. I will call that "A" in the middle of it. What was that?

A. That was a galvanized cover over the top, that was pushed through there.

Q. Then I see two things going down here, which I will call "B." What were those?

A. I just drawed that line down there to show where the legs came down, to stand on, where the valves and things were for the water.

1450 Q. Then I see a straight piece at the bottom of "A", which I will call "C", going straight through it. What was that?

A. Like a track. Two long angle-irons, which these things rested on when they were sliding through.

Q. At either end of this picture you have made I am making the letter "D", and I ask you what that represents in your drawing?

1451 A. There were small pans that went on the end of them to catch the drippings to come out of any that were turned up.

Q. Were these small pans, "D", underneath a track?

A. Yes.

Mr. Richards: I object to leading.

Mr. Staples: I think you are right about that.

Q. The extension of "C" to this end marked "Front" was what, what in the actual construction in 1902?

1452 A. Just a galvanized pan, to the end of that angle-iron, went out through there with the pan.

Q. The extension of that was what?

A. I call it a track. It was an angle-iron that went out through.

Q. If I write "Track", will that show the track?

A. Yes.

Q. That is the track (indicating)?

A. Yes.

Q. Was there a convenience for a milk can being inverted over that track?

A. Yes.

1453

Q. Was the drip-pan, "D", underneath that track?

A. Yes.

Mr. Richards: I object to leading.

The Court: Objection sustained.

Q. Was there a drip-pan on this machine?

A. Yes.

Q. Where was the drip-pan?

A. One in front and one in the back. As you fed through there was one in front where you put your stuff on, and there was one at the other end.

1454

Mr. Staples: I offer this drawing in evidence as Defendant's Exhibit 9.

The Court: Received without objection.

(Pencil sketch or drawing, made by witness McNamee, of machine of defendant in 1902, made on the Terrace, Buffalo, N. Y., marked in evidence Defendant's Exhibit 9.)

Q. What personally did you have to do, if anything, with any part of the machine that you have illustrated in Defendant's Exhibit 9?

1455

A. I helped to put it together, assemble the machine, and helped to put the drip-pans on the end.

Q. What work did you do on the drip-pans on the machine that you have described, in 1902?

A. I bored them on; I countersunk the angle-irons for the bolts to go down through. The first one I put on there I remember distinctly I didn't have quite deep enough, and I had to remove it and countersink it deeper.

1456 Daniel A. McNamee

Q. I call your attention to Defendant's Exhibit 6, which is a galvanized model.

Mr. Richards: I object to this. This witness has already testified, and I think I have been very liberal with Mr. Staples to let him put this testimony in in practically his own way. I understand the witness made a sketch as to show the machine as he remembers it. Now he is going to him a machine made just
1457 the other day, for the purpose of this litigation, and I can't see where it is legitimate or competent.

The Court: I think you ought to wait for the question.

Q. Have you ever seen this model that I hold in my hands, marked Defendant's Exhibit 6, before?

Mr. Richards: Same objection.

The Court: Overruled.

A. No, I never saw that model.

Q. Does that fairly represent anything to you
1458 like the machine you worked upon?

A. Yes.

Mr. Richards: I object to that.

The Court: Objection sustained. Strike out the answer. I will make the comparison between the drawing and the model.

Mr. Staples: Exception.

Q. Do you recognize what that is a model of?

Mr. Richards: Objected to.

The Court: Objection sustained. Your plans substantially describe that, do they not?

Mr. Staples: Yes. He made the drip-pan,

1459

and I was trying to see whether it was the same kind of a drip-pan on this.

The Court: Let us see the plan.

Mr. Richards: The plan is different to that. This is something that happened a generation ago.

The Court: I know, but that often happens. What do you want to show?

Mr. Staples: I want to show him this model and have him point out first whether he recognizes it as a fair representation.

1460

Mr. Richards: He has already testified to that.

The Court: I will permit it.

Q. I ask you does that model, Defendant's Exhibit 6, fairly represent the washing machine that you worked on for Rice & Adams on the Terrace in 1902?

A. Yes, it does.

Q. Do you see on that model what fairly represents the drip-saving device that you have been testifying to, that you made a drawing of in Defendant's Exhibit 9?

1461

A. The drip-saving device is on the front here (indicating).

Q. Is that where it says "Feed end"?

A. Yes.

Q. Where was the other drip-saving device in 1902?

A. Right in the rear.

Q. Is that in the opposite end marked "Out"?

A. Yes.

1462 Kirk K. Wright

Mr. Staples: That is all.

Cross-examination by Mr. Richards:

Q. In this sketch that you have made, Defendant's Exhibit 9, you have marked, I understand, the two drip-pans at each end of the machine with the letter "D". Were those two drip-pans the same at each end?

1463 A. Yes, as far as I could remember, they were the same.

Mr. Richards: That is all.

Mr. Staples: That is all.

Kirk K. Wright, called by the defendant and sworn, testified as follows:

Direct-examination by Mr. Staples:

Q. You have lived most of your life in the City of Buffalo, have you not?

1464 A. About 35 years.

Q. And all of your business career has been in connection with R. G. Wright & Company?

A. In that 35 years, yes.

Q. R. G. Wright & Company are engaged in what business?

A. Dairy supplies, both manufacturers and jobbers.

Q. During that time you have been interested in patents and in dairy machinery, have you not?

A. Yes.

Q. And you have invented some of the patents yourself or have worked upon them? 1465

A. Yes.

Q. Did that career of yours extend to a time before they had the bottles, selling milk in bottles?

A. Not before, but about the time it started.

Q. So that you have been very familiar with the machinery made for dairy purposes, have you not?

A. Yes, practically started in when it started.

Q. You are one of the pioneers in the business here? 1466

A. I would say so.

Q. During that time you have known Rice & Adams?

A. Yes.

Q. They are engaged in a competitive business with yours?

A. Yes.

Q. They started in business about the same time you did, or were in business in 1900? 1467

A. They were in the milk business and then started in the manufacturing of various supplies, after we did.

Q. When did you start in the manufacture of dairy supplies yourself in the City of Buffalo?

A. In 1895 or 1896, in a very small way.

Q. I wish that you would tell us briefly now the art or development of dairy machinery has come about from 1898 to 1908?

A. Practically, in 1898, milk was handled only in dippers and measures and cans, and then there

1468 developed the milk bottles, and the trade increased largely, that is, the per capita consumption; the machinery gradually increased in use, and different machinery was invented, so that today it is quite an important business, when then it was really of very little importance, in 1898.

Q. And when were the milk-bottle fillers first made and used in this country?

A. In 1900 and 1903.

1469 Q. And the bottle-washers were made about the same time?

A. Yes.

Q. Were the bottle-washers made before or after the can-washers?

A. I would say before.

Q. Were you the inventor of a bottle-washer on an application filed as early as 1903?

A. I was.

Q. Before you filed the application did you actually make a machine?

1470 A. We did.

Q. Where did you make that?

A. 52 The Terrace.

Q. In the City of Buffalo?

A. Yes.

Q. What year would you say that machine was made in?

A. 1902 or 1903, about a year before the patent was applied for.

Q. You know it was made before it was applied for?

A. Yes, absolutely I do.

1471

Q. I show you patent No. 850199, R. G. and K. K. Wright patent, April 16, 1907, application filed July 28, 1903, and I ask you whether you are the K. K. Wright, the inventor whose name appears there?

A. Yes, I am.

Q. Will you examine that patent and tell me whether there is a milk-saving device, drip-pan, or anything like that, in that patent?

A. Yes, there is, as shown in the drawings here. (Indicating).

1472

Q. What figure is it—2?

A. Figure 2, yes.

Q. What number on that drawing of the patent is the drip-pan that you are referring to?

A. 18.

Q. What was the use of that drip-pan?

A. To divert the liquid or water that was in the bottles to a certain point in a tank below it.

Q. In that drawing, at the receiving end of that bottle-washing machine, was there a convenience or provision for the entrance of the receptacles sought to be washed?

1473

A. Yes.

Q. What number is that of Figure 2?

A. I don't know as there is a number on the opening.

Q. Where is it with reference to the left-hand side of the machine?

A. On top of the track, 22.

Q. Right below the word "Witnesses"?

A. Yes.

1474 Kirk K. Wright

Q. Describe what that track was, how it looked?

A. That track was an angle-iron track.

Mr. Richards: He is asking him to describe a track set forth in this patent, and it is already described in the patent. I don't see the necessity of this witness testifying to what is in that patent.

Mr. Staples: He is an expert witness that I want to ask on the very pertinent question

1475 before us.

The Court: He can state what his understanding is of certain things in it.

Q. Was there opportunity to use the drip-pan, that you have just described in this Figure B, in connection with the track which you have just described.

A. Any place on the track.

Q. In 1902 or 1903, assuming that there had been a desire to save any milk drippings from the bot-

1476 tles washed in this machine, before the bottles were washed, what was the proper place for that to be done?

A. Before the bottles entered under the hood here to be washed.

Q. At that time, in 1902, what, if anything, were the known obvious means of catching the drops that would come from such bottles over the track that you have just described?

A. A pan or shelf.

Q. Are you familiar with the drip-pan?

A. Yes.

1477

Q. When you say "pan", would a drip-pan be a suitable means?

A. It would.

Q. In 1904, you made application, did you not, for a milk-bottle filler?

A. Yes.

Q. Before you made the application did you make the machine itself?

A. We did.

1478

Q. On that bottle-filler, I call your attention to Patent No. 768836, patented August 30, 1904, "apparatus for filling bottles, application filed May 29, 1903," with R. G. Wright's and K. K. Wright's names. Are you the K. K. Wright?

A. Yes.

Mr. Richards: Is that patent set forth in the Answer, that number?

Mr. Staples: Yes.

Q. Was that drip-saving device in that patent?

A. I believe not.

1479

Q. As a matter of fact, did you make a machine before you made the application for the patent?

A. We did.

Q. Did you sell the machine to the trade?

A. We did.

Q. For that matter, did you sell the machine I have asked you about, the washer, just previous to this, did you sell that also to the trade?

A. Yes.

Q. On the machine you actually manufactured, this bottle-filler which you made before you filed

1480 Kirk K. Wright

this application in patent No. 768836, was there a drip-saving device attached to it?

A. There was.

Q. Was it shipped out by you to the trade with the drip-saving device on it?

A. It was sold to the trade by us, yes.

Q. Will you describe the drip-saving device that you actually put on the machine in 1903?

A. It was a square pan, about 2 inches high, 15 by 18 inches square—oblong, I mean,—and it
1481 set under the case of bottles being filled.

Mr. Richards: I asked Mr. Staples whether or not that patent was set up in the Answer, and he said it was and I understood it was, and I didn't object at the time. It now develops that that patent is not set up in the Answer, and I object to any evidence in regard to it.

Mr. Staples: I find that that is so. But I brought it in here to see what he actually
1482 made in the form of a machine in 1902 and 1903, showing the knowledge and the art, irrespective of any patent.

The Court: It is not contented that it exhibits the patent in suit; merely to show the state of the art. It will be considered as merely acquainting the Court with the state of the art, not as anticipating the patent.

Q. Prior, did you sell the bottle-washing machine which you referred to?

A. We manufactured and sold that before the application was made, probably within a year.

1483

Q. With the drip-saver on at that time?

A. With the pan or drip-saver on, yes.

Q. When did you sell the machine that you made a bottle-filling machine, with the drip-saver on, that you have just described?

A. We manufactured and sold it previous to making application for the patent, and had a machine out in use.

Q. That was in 1903?

A. Yes.

1484

Q. Before the time of these patents I have called your attention to and the machine that you made before you filed the application for patent, did you make either bottle-washers or machines of any kind with drip-saving devices on?

A. Before the patent was applied for?

Q. Yes.

A. Yes, we made the pans on all the machines.

Q. I have asked you whether you have any pictures of machines that you made before the patent was applied for in 1903, and you showed me two pictures. Which is the first picture?

1485

A. We made this machine before we made that style (indicating).

Q. What is this picture I show you?

A. A picture of a double-ended filler; one end with 20 valves, to fill pints; the other with 12 valves, to fill quarts.

Q. Was there any drip-saving device connected with that?

Mr. Richards: I object to leading.

The Court: Objection sustained.

1486 Q. Describe that machine.

A. Bottle-filling machine, with valves, tracks to run milk-bottle crates on, with pans under the crates to catch the drippings that might leak out around the bottles as they were being filled.

Q. Was there any convenience whatever for the liquid when it was in the pan to be drained off into any other receptacle?

A. No.

1487 Q. Did you manufacture that machine in Buffalo?

A. We did.

Q. About when did you manufacture that machine in Buffalo?

A. In 1903, or about that time; about a year before we put in a pan.

Q. The patent you just referred to?

A. Yes.

Q. Did you sell that to the trade?

A. Yes.

1488 *Mr. Staples*: I offer it in evidence as Defendant's Exhibit No. 10.

The Court: Received.

(Picture of double-ended bottle-filling machine of R. G. Wright & Company marked in evidence Defendant's Exhibit 10.)

The Court: What is the difference between that and the patent in suit?

Mr. Staples: It is a drip-pan for all the purposes of filling functions, but it is prior to

anything there is in suit at the present time in connection with a utensil dairying machine; and it shows the drip-pan in, the feature that is emphasized in the patent in suit, in a little different form. It merely shows that there was a drip-pan in combination that existed in this machine.

1489

The Court: What element has the patent in suit that this patent has not?

Mr. Staples: This is a bottle-filling machine.

1490

Q. What was the mechanism, so far as moving or shifting cans?

A. There was a lever to raise the track against the valves so that it would automatically open the valves, with milk; and in that process there was sometimes a broken bottle, one that was then placed, and there would be more or less milk spilled, and this pan was to catch that milk.

Q. It was a filling device?

A. Yes, milk-bottle filler.

1491

Mr. Staples: I call your Honor's attention to Exhibit No. 10,—in answer to your Honor's question,—that there is the element of an endless chain to carry it through. That is the element that Rice & Adams had never used.

Q. There was no endless chain in this?

A. No.

Q. I show you another picture.

A. Milk-bottle filler, smaller machine, filling one row of bottles in a 12-quart case, or one row of bottles in a 16-pint case. The purpose of that

1492 machine is the same as the other, only different in size and a little mechanical construction.

Q. Was there a drip-saving device on that?

A. Yes, there is or was.

Q. Will you describe that ?

A. It has a pan underneath the case to catch the milk that would leak ont between the valve and the top of the bottle and run down over the bottle, through the case, and catch it.

1493 *By the Court*:

Q. No bottle-washing apparatus?

A. No.

By Mr. Staples:

Q. Is that a picture you took of your own machine at that time?

A. It was taken.

Q. Did you make a machine itself fairly representative of this picture?

A. Yes.

Q. And sold it to the trade?

1494 A. Yes.

Q. About when?

A. In 1903, and from then for a number of years.

Q. That had no endless carrier upon it?

A. No.

Mr. Staples: I offer it in evidence as Defendant's Exhibit No. 11.

The Court: Received.

(Picture of Milk-bottle-filling machine, smaller than Defendant's Exhibit No. 10,

marked in evidence Defendant's Exhibit No. 11.) 1495

The Court: That model there is the nearest approach to it, is it not? Did that apparatus have a cleaning device?

Mr. Staples: Yes.

Mr. Staples: But, when you come to read the proof in the depositions, there is nothing but the drip-pan and the continuous conveyor. That did not have a continuous conveyor, and 1496 they do not say that they have it, in the alleged infringing machine. There is only one thing that is emphasized.

The Court: You have never made any apparatus with a conveyor?

Mr. Staples: We have an alternating conveyor and sprayers and pumps and a thousand and one things that they have not taken the pains to describe. I am confining it to the two elements that they have given proof 1497 on—endless carrier, and—

The Court: A combination is made of different elements, all of which may be old.

Mr. Staples: I understand that, in order to make a combination patentable, they have got to show that the elements of the claim do exist in the alleged infringing machine, and the evidence shows that they do not. In other words, I am saving the Court's time going through a thousand details by merely confining it to two elements.

1498

The Court: I am sorry that I interrupted you, if you are trying to do that.

Mr. Staples: You may ask.

Mr. Richards: No cross-examination.

Mr. Staples: That is all.

Mr. Richards: That is all.

Ulrich G. Gressel, called by the defendant and sworn, testified as follows:

1499

Direct-examination by Mr. Staples:

Q. Mr. Gressel, you have lived in Buffalo, ever since you were a child, have you not?

A. Yes.

Q. During all that time you have been what, what has been your business?

A. Machinist and tool-maker.

Q. At the present time you are living in Buffalo?

A. Yes.

1500

Q. What is your employment at the present time?

A. General foreman at the Lumen Bearing Company.

Q. Where is that located?

A. At Lathrop and Sycamore Streets.

Q. Have you charge of the machinery up there?

A. Yes.

Q. When was that?

A. Charge of the machinery and the men.

Q. Were you ever employed by Rice & Adams?

A. In 1903.

Q. Where was that?

A. Erie Street.

Q. Was that in the building also occupied by the Lobee Pump Works?

A. August Feine and Lobee Pump Works.

Q. What time in 1903 were you working there?

A. About the first week in May, in 1903.

Q. Is there any particular way that that is impressed upon your mind?

A. Only that I worked with John R. Kime, and we had a lay-off on the last of May.

Q. Who was working with you at the Lobee Pump Works place on Erie Street?

A. Rice & Adams.

Q. Albert Rice?

A. Yes.

Q. And Mr. Adams?

A. Yes.

Q. Anyone else?

A. Orlando Adams worked there during his vacation and on Saturday afternoons or Saturdays all day.

Q. Do you recall what the first work was that you did down there for Rice & Adams?

A. The first work I did was a machine that came back from Boston, Massachusetts, a can washer.

Q. Did you see the markings on it so that you could tell from where it came in Boston?

A. Yes, I uncrated it myself.

Q. What was the name on it?

A. Whiting's, I think.

1504 Q. You uncrated the machine?

A. Yes.

Q. What was the machine you uncrated?

A. A can washer, galvanized iron.

Q. Did you set the machine up after you uncrated it?

A. It had to be scraped off, the scum, and cleaned up.

Q. What was the scum?

A. Milk scum.

1505 Q. Had this been evidently in use?

A. Yes.

Q. I show you this model, Defendant's Exhibit 6. What does that fairly represent?

Mr. Richards: I object to that model again. I think the witness should be permitted to describe the machine itself that he saw. This model was made about a week ago.

Mr. Staples: I thought I could save time.

Q. Can you describe that machine fairly, your-

1506 self?

A. Yes.

Q. Will you do it?

A. The can washer was built on rollers, with a rack, fed in on one end; and it was returned to us with three extra cans, from Boston, Massachusetts, because they could not operate it on account of the cans were tumbling over. So I made some carriers, and one drip-pan was broken that we could not use it, and I had to make a new one; therefore, we changed the thing entirely and we linked on both ends and put about a 15-degree

angle on one end, and the other was a 2-degree pitch, so that that was straight at the drip-pan, with grooved ends to carry the discharge water that came from the drippings of the can back into the machine. On the other end was the drip-pan that saved the drippings, with a small spout on it, whatever might fall from the milk-cans, that might be left in them. 1507

Q. Last April, this year, you were asked, were you not, to make a drawing to show exactly what you remembered of that milk-washing machine which you have just described as being down on the Terrace in Rice & Adams' place of business in 1903? 1508

A. Yes.

Q. Did you make such a drawing?

A. I had my draftsman make it, through my instructions.

Q. You gave him the directions?

A. Yes.

Q. Did you make the drawing before you saw any model made of material of that can-washing machine? 1509

A. Yes.

Q. I show you a blueprint drawing. What is that?

A. A can washer.

Q. What can washer?

A. The can washer that was sent to Boston, Massachusetts.

Mr. Richards: I object to that, that it ap-

1510 pears that that blueprint was made within the last year or so.

The Court: He said it was made under his directions, and it merely contains his recollection of what was done at that time. It is not conclusive in any way, but I think they are entitled to show it.

Mr. Richards: I object to the statement that it came from Boston.

1511 *Mr. Staples*: He said he sent the machine to Boston.

Mr. Richards: He said a machine that came from Boston. That is obviously a mere conclusion of the witness.

The Court: This is a description of a can washer of the kind sent to Boston.

Q. Did you have part in shipping this can washer?

A. I was the machinist and done the crating and shipping.

1512 Q. Is this the same machine that you have been describing, that you worked upon to get off the milk scum in 1903, down on the Terrace, in Buffalo?

A. Yes.

Mr. Staples: I offer that in evidence as Defendant's Exhibit 12.

The Court: Received.

(Blueprint drawing of can washer sent by witness Gressel to Boston, Massachusetts, and returned to Buffalo, marked in evidence Defendant's Exhibit 12.)

Q. Referring to this Defendant's Exhibit 12, I see on the right-hand lower side the words "drip-pan"? 1513

A. Yes.

Q. Does that refer to the drip-pan that you have been describing as being at one end of the machine, the receiving end of the machine?

A. Yes.

Q. I notice at the right-hand upper corner a detail of drip-pan at the end?

A. That was at the discharge end of the machine. 1514

Q. I notice that in the middle you have the word "drip-pan" with an arrow?

A. Yes.

Q. Will you describe the part of the machine that you made in 1903 to which that refers?

A. That refers to the discharge end, where the cans come out after they are washed, and is put on between the pipe and the roller as a spacer for the width of the carrier, and that laid on top of them pipes, which were two feet two inches higher, and then the tank, to let the water drip back into the tank. 1515

Q. On the upper left-hand side I notice the words "drip-pan drain into tank. See detail in upper right-hand corner," with an arrow pointing to the tank?

A. Yes.

Q. Does that show fairly, as illustrating in this particular blueprint, the relationship of the drip-pan to which the arrow points and the tank?

1516

A. Yes.

Q. In the middle there are the words "longitudinal section at end showing drip-pan to the tank"?

A. Yes.

Q. Does that show or indicate fairly what you worked on in 1902?

A. Yes.

Q. This was an oblong machine made of what material?

1517 A. Galvanized iron and angle iron.

Q. I show you Defendant's Exhibit 6. Do you recognize what that is?

A. Yes, it is a can washer.

Q. Does that model which I show you fairly represent the general appearance of the can-washing machine you saw in May 1903 on the Terrace in Buffalo?

A. Yes—everything represents the same, outside of that drip-pan and this rod; we had to take that out; and this drip-pan was put down on an
1518 angle form because the other was destroyed; and we made carriers in here to take the place of this rod.

By the Court:

Q. What was the function of the rod?

A. To shove it out.

Q. Where was the cleaning instrumentality; how can you say that it was a fair representation?

(No answer.)

By Mr. Staples:

1519

Q. Was there in this machine, on the inside, any sprays?

A. On the top of here a pipe went in, and there was solid steam pressure went over the top and on the bottom, and then there was a three-way valve on each one, run by a Lobee pump, which was changed after this came back because they wanted a higher pressure; then we got a centrifugal pump from the Snow Steam Pump Company. After that I did not hear anything more of it, and Mr. Adams never said whether it worked successfully or not.

1520

Q. But there were steam spraying devices?

A. Up and down.

Q. Pipes and tanks for the holding of washing materials?

A. Yes.

Q. And a washing machine?

A. Yes.

By the Court:

1521

Q. What held these cans in place while all this was going on?

A. They put it into a carrier, and they have only a one-inch tube or space between the top of that; and the spray was probably one and a half pounds pressure, and the cans weighed seven or eight pounds, and the pressure was not strong enough to lift the can out of position; at the same time there was a pressure on the top of the can, as much pressure as on the bottom.

By Mr. Staples:

Q. What was there to hold it rigid over the

1522

trough, while the cleaning operation was going on?

A. That was why they sent it back from Boston, because it would not hold in position; so we made little wires to hold them in position while the washing operation was going on.

Q. As a matter of fact, this particular can-washing machine that you saw in 1903 was adapted for an ordinary Buffalo milk can, was it not?

A. Not the one that I received.

1523 Q. But the one before?

A. Yes.

Q. The kind of cans that they used in Boston was different from the cans used in Buffalo?

A. Yes.

Q. With this shipment which you unpacked from Boston did you also find some cans that were sent on from Boston to show you the kind of cans they had?

A. Yes.

1524 Q. Those cans are smaller than the Buffalo cans are they not?

A. Yes.

Q. What holds the cans in place through this—

The Court: He has just told you that that was the objection to it when it came from Boston.

Q. Even before that—there is a track, is there not?

A. There is a track in there, and a space with a wrought-iron pipe, of the right width to let them roll through on these here rollers on a carrier.

1525

Q. Did you make more than one can-washer?

A. Yes.

Q. During 1903?

A. Yes, I made three.

Q. On all of them were there drip-pans?

A. Yes.

Q. A convenience for washing?

A. Yes.

Q. And apparatus on which the cans could go through a washer?

1526

A. Yes.

Q. And, generally, were those can-washers like the can-washers that you have just described?

A. Only that the can-washers we changed we had them all on one side, to give us more room for our piping, whereas that old machine we sent to Boston covered the entire tank on both sides. The other two we built in sections to make it easier shipping.

Q. The piping had to do with the washing mechanism?

1527

A. Yes.

so far as the decree affect machines in your dis-

Q. Did you also ship these other two machines?

A. I shipped them personally, myself.

Q. Where to?

A. One to the Philadelphia Milk Dairy Agency, and one to Nova Scotia.

Q. To a dairy agency there?

A. Yes.

Q. Did these machines that you made in 1903

1528

have apparatus for shooting water inside of the can?

A. Yes.

Mr. Richards: I object to leading. Let the witness testify.

The Court: That is the cleaning apparatus that I thought he told us about twice.

Q. With reference to the cleaning of the outside of the machine.

1529 A. That is what I spoke of—that we had the same pressure on the outside as on the inside, to hold the can in position.

Mr. Staples: That is all.

Mr. Richards: No cross-examination.

Samuel H. Tillman, called by the defendant and sworn, testified as follows:

Direct-examination by Mr. Staples:

Q. Mr. Tillman, where do you live?

1530 A. 143 Jewett Parkway.

Q. You are retired from business at the present time?

A. Yes.

Q. Have you lived most of your life in Buffalo?

A. No.

Q. For the last 30 years what has been your business?

A. In the milk business.

Q. When did you begin the milk business in the City of Buffalo yourself?

A. I think it was in 1886.

1531

Q. Since that time, down until your retirement last fall, were you in the milk business continuously?

A. Yes.

Q. Before 1888 did you work in the dairy or milk business?

A. Yes, New York City.

Q. In 1888, or say 1890, where were you doing business yourself?

A. 1890?

1532

Q. Where was your first place of business in Buffalo?

A. On Elk Street, I think.

Q. About how long were you in business at Elk Street?

A. About 12 years, I should think.

Q. Did you attend yourself, in your dairy, to bottle-washing and bottle-filling and can-washing?

A. I did.

1533

Q. And you have watched the development of how that was done, in the City of Buffalo, in your own place, and, as a matter of fact, you are pretty familiar with all the dairying places in Buffalo?

A. It has been very interesting to see the development.

Q. It has been very rapid since 1898 for the following ten years?

A. Yes.

Q. You have retired from the People's Milk Company, where you were an officer of that company?

A. Yes.

1534 Q. And you were in the People's Milk Company from the time it started down until last year, were you not?

A. Mr. Male and I were the organizers.

Q. Did you, with your dairy apparatus, have occasion to use drip-pans for the saving of drip milk?

A. From filling bottles, yes.

Q. You did?

A. Yes.

1535 Q. How early did you have occasion to use a drip-pan in connection with a bottle-filler, yourself, in the City of Buffalo?

Mr. Richards: I don't recognize any such prior use as this set up in the answer, and I don't understand that any such evidence is admissible at this time.

The Court: If it is not set up in the answer I don't see how I can receive it.

Mr. Staples: I am just saying that the prior knowledge and the only thing that they have

1536 alleged here is a drip-pan in connection with washing-machines.

The Court: By prior use they are entitled to—

Mr. Staples: I am showing this as prior knowledge of the whole situation—and the one thing they claim is the marvelous effects of a drip-pan in connection with milk savings. That is all I am bringing out that for.

The Court: This is on the state of the art, then?

Mr. Staples: Yes.

Q. I understand you to say that you used a drip-pan?

A. In filling bottles I always used a drip-pan from the time I got bottles.

Q. Did you use a drip-pan device for saving milk, yourself, or buy it?

A. I had it made.

Q. Where?

A. I think in some tinshop, possibly, on Elk Street.

Q. To your best memory about when was that?

A. It must have been sometime between 1890 and 1896.

Q. You know that it was before 1900?

A. Oh, yes.

Q. Did you have a bottle-filler, a machine that would fill more than one bottle at a time?

A. I had a can made, possibly so high (indicating), a circular can, with one or two faucets into it, to fill the bottles; and under those bottles I had a drip-pan.

Q. What was the drip-pan for?

A. To keep the milk from going on the floor; not so much saving, but we had no concrete floors at that time, and we had to be careful.

Q. Was there a spigot connected with it?

A. A faucet.

Q. What was that for?

A. To draw the milk from the can into the bottles.

1537

1538

1539

1540 Samuel H. Tillman

Q. You would turn the spigot and let that go into the bottles?

A. Set the bottle under the spigot and fill the bottle.

By the Court:

Q. Would you fill the bottle in that way with the milk that had dripped from the can prior to the cleaning operation?

A. No, from the can that the milk had been
1541 emptied into for that purpose.

By Mr. Staples:

Q. When did you start in with the People's Milk Company?

A. In 1902 or 1903, I forget the exact date.

Q. Did they have any mechanism there with drip-saving devices on, the People's Milk Company?

A. I was not very familiar with the dairy at that time. My work was all in the office. We were
1542 pioneers in pastaurizing machinery.

Mr. Staples: You may ask.

Mr. Richards: No cross-examination.

Mr. Staples: There was another witness, merely to show the drip-saving device in connection with the People's Milk Company; but there was a funeral which keeps him away, and he could not come until tomorrow morning. But we will not wait until tomorrow morning. It will be corroborative of the drip-saving patent used in some kind of a mechanism of this sort.

1513

I do wish to put in some exhibits at this time.

Mr. Richards: I would like the record to show at this time a motion made by the plaintiff.

The Court: Very well.

Plaintiff's Motion

Mr. Richards: The plaintiff moves to strike from the record all evidence adduced by any of these witnesses tending to establish prior use or in any way attacking the validity or scope of the Blair patent in suit, on the ground that this defendant is precluded from any such defence on account of its connection with the litigation at Chicago against the Bowman Dairy Company.

1514

The Court: Decision reserved.

Defendant's Motion to Strike Out Testimony

Mr. Staples: I wish to move, if I have not already done so, to strike out all the testimony of Mr. Potts from the record, as incompetent, irrelevant, immaterial, not having established privity.

1515

The Court: Decision reserved.

Mr. Staples: I would like to offer, before the defendant closes, Defendant's Exhibits 1 to 5, marked for identification, on the depositions taken on behalf of the plaintiff, which the plaintiff asked should be in court for the purpose of being put in as an exhibit. I will

1546 have the stenographer number the exhibits the same as the numbers for identification.

The Court: Very well.

(Defendant's Exhibits 1 to 5, inclusive, heretofore marked for identification on deposition taken on behalf of plaintiff, now marked in evidence under same exhibit numbers.)

1547 *Mr. Staples*: I would also like to offer in evidence the patent circular which Mr. Parker has handed me, which Mr. Wright referred to; and I also would like to offer in evidence as an exhibit the Government copy of patent numbers 768836, to which Mr. Wright referred by number, this being his original patent.

The Court: Received.

(Patent circular, referred to by witness Wright in his testimony, marked in evidence
1548 Defendant's Exhibit 13.)

(Government copy of patent No. 768836, referred to by number by witness Wright in his testimony, being Wright's original patent, marked in evidence Defendant's Exhibit 14.)

Mr. Staples: The defendant also offers in evidence as an exhibit the following patents:

The Court: I think you should content yourself with selecting the patents nearest to the patent in suit.

List of 20 patents received in evidence on behalf of Def't. 1549

Mr. Staples: Mr. Parker suggests that we put in a certified copy of the complete file of the Blair patents, only a portion of them having been put in by the plaintiff.

The Court: Received.

List of 20 patents received in evidence on behalf of Defendant

New X	240,404	Gibbs	April 19, 1881
	498,549	Hodgdon	May 30, 1893
	546,205	Van Gilder	Sept. 10, 1895
	574,075	Robbins	Dec. 29, 1896
	617,566	Dreyer	Jan. 10, 1899
New X	639,378	Groterjan	Dec. 19, 1899
	663,142	Warning	Dec. 4, 1900
	708,738	Schirmer	Sept. 9, 1902
	745,752	Adams & Rice	Dec. 1, 1903
	764,222	Adams & Rice	July 5, 1904
	648,138	Adams & Rice	April 24, 1900
	781,692	Stubbs	Feb. 7, 1905
	784,504	Rubin	March 7, 1905
	795,040	Hopkins	July 18, 1905
	850,199	Wright	April 16, 1907
	864,131	Hood	Aug. 20, 1907
	864,132	Hood	Aug. 20, 1907
	864,133	Hood	Aug. 20, 1907
New	505,208	Wagandt	Sept. 19, 1893
	483,757	Allgood	Oct. 4, 1892

1550

1551

Mr. Staples: I also offer in evidence certified copies of the file wrappers of the three Hood Patents, Nos. 864,131, 864,132 and 864,-133.

1552 List of 20 patents received in evidence on behalf of Def't.

The Court: Received—but I don't see why you need the file wrappers of the Hood Patents.

Mr. Parker: To prove the filing dates. We desire to have the full contents in because the plaintiff has put in a couple of papers.

The Court: You are now withdrawing the file wrapper of the Hood Patents?

Mr. Parker: Yes.

The Court: Have you any testimony?

1553 *Mr. Richards*: I understand that the defendant has been granted tentative leave to take testimony, if any should develop. I would like to reserve our right for further consultation and investigation, when we go back to Chicago, to see if we can find any additional testimony on that subject.

Mr. Staples: There was no arrangement made by me—but anything that the Court thinks is proper.

1554 *The Court*: I do not see why you should not submit it to me now on the testimony. I have not read the depositions, but I presume you will wish to file briefs and sum it up later on. When you do that, you will refer to the testimony, such parts of it, anyway, as you deem best.

Mr. Richards: There is a stipulation on file that either party may introduce copies of the ordinary patents, and that that introduction shall carry with it the filing dates appearing thereon.

List of 20 patents received in evidence on behalf of Def't.

1555

The Court: I understand that the defendant reserves the right to examine an expert witness, the examination to be conducted by deposition; and you reserve the right, Mr. Richards, to swear an additional witness,—relating to what?

Mr. Richards: Relating to the control or lack of control of the defendant here over that Chicago litigation.

1556

The Court: When is the testimony of this additional witness to be taken by the defendant?

Mr. Staples: As soon as Mr. Hains is through with the litigation.

The Court: Within ten days.

Mr. Staples: I don't know about that time.

Mr. Richards: Within thirty days.

Mr. Staples: I would say within thirty days would be a fair time for his testimony. His testimony to be taken by deposition.

1557

The Court: Very good. His testimony to be taken by deposition. What about finally submitting the case, subject to these depositions and the right to examine and take further testimony on the subject you have mentioned?

Mr. Richards: We should have fifteen days after you close, in which to take any rebuttal or any other testimony we wish.

Mr. Staples: I don't think there will be any trouble on that with counsel.

I would like to state my motion. At the

1558 List of 20 patents received in evidence on behalf of Def't.

close of the plaintiff's case I would like to make that motion for dismissal on the ground of prior knowledge and prior use and different from the interlocutory decree, and that this case was not res judicata, and for such other reasons as to the Court seems just and proper, as follows:

I move for dismissal on the same grounds as the motion for a nonsuit, and on the further grounds:

1559

1. That the defendant has shown anticipation of the alleged invention by prior knowledge and prior use.

2. That the final decree in the Bowman case is not binding on this defendant because entered after settlement of the case and without the knowledge or consent of this defendant.

3. That the interlocutory judgment in the Bowman case was not res judicata, as against this defendant, as a matter of law.

1560

4. That the Bowman case decision is not res judicata, under the doctrine of comity, because the same facts were not before the court in the Bowman case; and for the further reason that comity is not a rule of law, and applies only to cases where the court is in doubt as to the soundness of its own views.

(Discussion off record as to submission of case and date of continuation.)

The Court: We will fix the oral argument for the 4th day of October, 1926.

(PAGES 167-209, INCLUSIVE, CONSISTING OF CORRESPONDENCE BETWEEN ATTORNEYS IN BOWMAN CASE, ARE OMITTED FROM THIS COPY.) 1561

April 29, 1921

Mr. Harry D. Lathrop,
2459 W. 48th St.,
Chicago, Ill.

Dear Mr. Lathrop:—

Mr. Richards, Mr. Threedy, and myself, went out to the Bowman plant this morning at 6638 Wentworth Avenue, and examined the Rice & Adams machine while it was in operation. 1562

The man who was in charge of emptying the milk cans, stated that the drip-pans saved on an average of fifty pounds of milk per day. There were three cans continuously over the drip-pan before they entered the washer proper. When the operator was placing cans on the machine steadily, there was a continuous stream of milk pouring out of the drip-pan, I would judge about the thickness of a lead pencil at least. The machine bore a name plate as follows: 1563

"Rice & Adams Corporation,
Manufacturers of Milk Handling Machinery,
Buffalo, N. Y., U. S. A."

Will you please find out whether or not the Bowman Dairy Company is a corporation of the State of Illinois or some other state, and its correct corporate name, and also the correct corporate name of Rice & Adams, and the laws of the state under

which they are incorporated? Your commercial agency will furnish this information, and if either of them are foreign corporations, find out if they are licensed to do business in this state, and we will join Rice & Adams in suit with the Bowman Dairy Company. Then if they wish to try and get out of it, we will still be able to maintain in suit against the Bowman Dairy Company.

1565 Have each one of the parties who went to see the machine with you, make a written memorandum fully stating just what he saw and what he was told, with the date, and let me have this information with the full name and addresses of each of the witnesses.

As soon as I have this information we will at once proceed with the suit.

Very truly yours,

JRHP:MA

1566 PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

May 27, 1921

Mr. Joshua R. H. Potts,
Chicago, Ill.

Dear Sir:

In the matter of the Bill filed by Harry D. Lathrop against our client, Rice & Adams Corporation and Bowman Dairy Co., have you an extra copy of the Bill that you can let us have? If it is not convenient for you to do this, we will be obliged if

1567

you will let us know at once so that we can obtain a copy from the Clerk of the Court.

Yours very truly,

(SGD) PARKER & PROCHNOW.

CWP:P

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

1568

June 7, 1921.

Mr. Joshua R. H. Potts,
Hartford Bldg.,
Chicago, Ill.

Dear Sir: *Re Lathrop vs Rice & Adams Corporation and Bowman Dairy Company*

It is necessary for us to ask you to stipulate an extension of thirty days for filing the answer or pleading in the above case. We have been so busily engaged in connection with another suit which was set for trial here this week and in connection with depositions and interrogatories in two other suits that it has been and will be, impossible for us to give the necessary time for the answers within the time now allowed.

1569

We are enclosing a stipulation and copy for your files and will be obliged if you will execute and file the original and advise us upon receipt of this so that we may know whether the time has been extended.

1570 Kindly advise us also which claims of the patent you will rely upon.

Yours very truly,

PARKER & PROCHNOW.

CWP:ABP

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
1571 ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

June 10, 1921

Mr. Joshua R. H. Potts,
112 Hartford Bldg.,
Chicago, Ill.

Dear Sir: *Re Lathrop vs Rice & Adams Corporation and Bowman Dairy Company*

We wish to thank you for your favor of the 9th inst., advising us that you signed and filed with
1572 the Clerk of the Court the stipulation for extension of time to file answers.

We note you will rely upon only the claims of the Blair patent covering the drip-pan for the purpose of receiving the milk drippings uncontaminated by the washing fluid.

Yours very truly,

(SGD.) PARKER & PROCHNOW

CWP:P

Correspondence 1573

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

November 29, 1921

Mr. Joshua R. H. Potts,
112 Hartford Bldg.,
850 Dearborn St.,
Chicago, Ill.

Dear Sir:—

Re Lathrop Vs Bowman Dairy Co. 1574

As agreed at the recent hearing at Chicago, we enclose herewith for your use, copies of Plaintiff's Exhibits 5 and 6. We regret that we have no copies of the page from the milk magazine.

Yours very truly,
(SGD.) PARKER & PROCHNOW

BAB:ABP

—WESTERN UNION— 1575
—TELEGRAM—

B 19 BU 16 1921 DEC 10 AM 8 50
SQ BUFFALO NY 932A 10
M JOSHUA R. H. POTTS
HARTFORD BLDG 8 SOUTH DEARBORN ST CHICAGO ILL
WILL START TESTIMONY BEHALF BOWMAN DAIRY COMPANY AT BOSTON FRIDAY THE SIXTEENTH INSTANT STOP FORMAL NOTICE FOLLOWS
PARKER & PROCHNOW.

1575 Correspondence

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

January 3, 1922

Mr. J. R. H. POTTS,
Hartford Bldg.,
Chicago, Ill.

Dear Sir:—

1577 *Re Lathrop vs Bowman Dairy Co.*

Mr. Robert P. Hains of Boston, who is to testify for us as an expert witness in the above entitled suit, has advised us that by reason of previous engagements, he will not be able to give us his testimony before the expiration of our time as now set.

We understood from you at the recent hearings in Boston and New York City, that you would be agreeable to an extension of time if the same was necessary, and accordingly have forwarded to
1578 Messrs. Montgomery, Hart & Smith of Chicago, a stipulation providing for an extension of thirty days in our time for taking testimony, from the date now set, the other dates to be extended accordingly.

Trusting that you will see fit to join us in this stipulation, we remain.

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:ABP

Correspondence 1579

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

January 17, 1922

Mr. Joshua R. H. Potts,
Hartford Bldg.,
Chicago, Ill.

1580

Dear Sir:—

Re Lathrop vs Bowman Dairy Co.

In the matter of our further depositions in this cause, we have been informed that it will be agreeable for Mr. Hains to submit his deposition during the week of January 23d.

We are writing you in this manner so as to accomodate your convenience in the matter, and request that you wire us Wednesday if you have 1581
any preference as to dates, so that we can give you formal notice.

Awaiting your advices, we are,

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:ABP

1582

RECEIVED AT COR. JACKSON AND
LASALLE, CHICAGO

—WESTERN UNION—
—TELEGRAM—

A586BU 53 NL 1922 JAN 19 PM 5 16

1583 SQ BUFFALO NY 19

JOSHUA R H POTTS

HARTFORD BLDG CHICAGO ILL

EXPECT TO START TESTIMONY AT OFFICE OF ROBERT P HAINS FORTY FIVE MILK STREET BOSTON MASSACHUSETTS WEDNESDAY JANUARY TWENTY-FIFTH STOP ARE AWAITING WORD FROM ANOTHER WITNESS BEFORE SENDING YOU
1584 FORMAL NOTICE STOP THIS WILL BE NOTICE TO YOU OF TESTIMONY BEGINNING WEDNESDAY AND WE WILL FORWARD FORMAL NOTICE TOMORROW OR NEXT DAY

PARKER & PROCHNOW.

Correspondence 1585

WESTERN UNION
TELEGRAM

A451 BU BLUE 1922 JAN 21 PM 4 29
SQ BUFFALO NY 521P 21
JOSHUA R H POTTS
HARTFORD BLDG 8 SOUTH DEARBORN ST
CHICAGO ILL
START TESTIMONY WITNESSES ROBERT P HAINS JAMES R HODDER AND SIMEON KEITH AT OFFICE OF HAINS FORTY FIVE MILK STREET BOSTON MASSACHUSETTS 1586
WEDNESDAY MORNING JANUARY TWENTY FIFTH AT TEN OCLOCK LATHROP VS BOWMAN DAIRY COMPANY SUIT STOP FORMAL NOTICE FOLLOWS
PARKER & PROCHNOW

WESTERN UNION
TELEGRAM

AIIOBU 37 NL 1922 JAN 22 PM 7 09
SQ BUFFALO NY 22 1587
JOSHUA R H POTTS
HARTFORD BLDG 8 SOUTH DEARBORN ST
CHICAGO ILL
LATHROP VERSUS BOWMAN DAIRY WE REQUEST YOU BRING WITH YOU TO 45 MILK STREET BOSTON ON WEDNESDAY JANUARY TWENTY FIFTH PLAINTIFF'S EXHIBITS NUMBERS FOUR FIVE SIX AND EIGHT AND THERE PRODUCE SUCH EXHIBITS STOP LETTER FOLLOWS
PARKER & PROCHNOW

1588 Correspondence

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

January 22, 1922

Mr. Joshua R. H. Potts,
Chicago, Illinois.

Dear Sir:

1589

Re Lathrop vs Bowman Dairy Company

We request that you bring with you to the hearing at Boston, Massachusetts, on Wednesday January 25, 1922, in the office of Robt. P. Hains, 45 Milk Street, the following named Exhibits in this cause which you have in your custody:

Plaintiff's Exhibit 4, Page Rice & Adams Advertisement Milk Magazine

1590 Plaintiff's Exhibit 5, Pages Rice & Adams Catalogue

Plaintiff's Exhibit 6, Pages Rice & Adams Catalogue

Plaintiff's Exhibit 8, Blue Print-Alleged infringing machine.

Yours very truly,

(SGD) PARKER & PROCHNOW

B

Correspondence 1591

—WESTERN UNION—
—TELEGRAM—

C9U 34 1922 FEB 4 AM 9 49

SQ BUFFALO NY 1038A 4

JOSHUA R. H. POTTS
HARTFORD BLDG 8 SOUTH DEARBORN ST
CHICAGO ILL

WILL TAKE TESTIMONY WITNESS JOSEPH H. CONSTANTINE AT OUR OFFICE FIVE HUNDRED AND SIX ELLICOTT SQUARE BUFFALO NEW YORK TUESDAY MORNING FEBRUARY SEVENTH AT TEN OCLOCK LATHROP VS BOWMAN DAIRY COMPANY STOP FORMAL NOTICE FOLLOWS 1592

PARKER & PROCHNOW.

PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING 1593
BUFFALO, N. Y.

March 1, 1922

Mr. Joshua R. H. Potts,
Chicago, Ill.
Dear Sir:

Re Lathrop vs Bowman Dairy Company

Pursuant to the understanding with Mr. Bean at Towanda the other day, we enclose herewith an original and one copy of a stipulation extending our times for taking depositions so as to include

1594 the depositions of James R. Hodder, Simeon Keith and Joseph Constantine. If this stipulation appears to be in proper form, will you kindly sign the original and return it to us?

We are awaiting receipt of your advices on your missing copies of patents and also on the extension in times which you will require.

Yours very truly,

(SGD.) PARKER & PROCHNOW

1595 BAB:ABP
ENC

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

March 1, 1922

1596 Mr. Joshua R. H. Potts,
Chicago, Ill.

Dear Sir:—

We acknowledge with thanks receipt of your favor of February 23rd enclosing a photographic copy of the original Blair drawing and of the Blair photographs, offered in evidence at Boston.

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:ABP

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

March 7, 1922

Mr. Joshua R. H. Potts,
8 South Dearborn St.,
Chicago, Ill.

1598

Subject: *Lathrop vs Bowman Dairy Co.*

Dear Sir:—

We enclose herewith a stipulation, extending the times for taking the rebuttal testimony to and including April 8th, 1922. We have drafted the stipulation in this form rather than in the form sent to us by you for the reason that it may prove necessary for us to take some rebuttal testimony later.

1599

We also enclose copies of the patents to Hayes No. 625,762 and Meikle No. 338,096, copies of which patents you have been unable to secure. We regret that we have no duplicate copy of the Neely patent.

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:SO

1600 Correspondence

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

March 7, 1922

Mr. Joshua R. H. Potts,
8 South Dearborn St.,
Chicago, Ill.

1601 Dear Sir:

We acknowledge with thanks receipt of your favor of March 2d enclosing the signed stipulation extending our time for taking depositions to and including February 9, 1922.

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:SO

1602 —WESTERN UNION—
—TELEGRAM—

B33BU 19 1922 APR 18 AM 10 10

SQ BUFFALO NY 105?A 18

JOSHUA R H POTTS

1112 HARTFORD BLDG CHICAGO ILL

HAVE NOT RECEIVED ANY NOTICE OF TESTIMONY LATHROP VERSUS BOWMAN STOP PLEASE WIRE DATE YOU EXPECT TO START TESTIMONY

(SGD) PARKER & PROCHNOW

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

1603

April 19, 1922

Mr. Joshua R. H. Potts,
1112 HARTFORD BLDG.,
Chicago, Ill.

Subject: *Lathrop vs Bowman Dairy Co.*

Dear Sir:—

1604

We have received your telegram of yesterday advising that you will take Lathrop's testimony April 26th, we wish to thank you for so promptly replying to our telegram.

Yours very truly,
(SGD) PARKER & PROCHNOW

BAB:SO

PARKER & PROCHNOW
PATENT AND TRADE MARK LAW
ELLICOTT SQUARE BUILDING
BUFFALO, N. Y.

1605

May 18, 1922

Mr. Joshua R. H. Potts,
1112 Hartford Bldg.,
Chicago, Ill.
Dear Sir:—

Re Livingston vs Bowman Dairy Co

In connection with the above entitled case, we inform you that we are planning to take some re-

buttal testimony in New York City and possibly elsewhere, the latter part of the week of May 21st. We are giving you this information as far in advance as possible and when we have definitely decided upon a date and place of taking the testimony, which will be within the next two days, will send you a formal notice.

Yours very truly,

(SGD) PARKER & PROCHNOW

BAB:ABP

—WESTERN UNION—
—TELEGRAM—

B181 BU 35 1922 May 22 PM 2 51
STANDARD TIME

SQ BUFFALO NY 335P 22

JOSHUA R H POTTS
HARTFORD BLDG 8 SOUTH DEARBORN ST
CHICAGO ILL
LATHROP VERSUS BOWMAN DAIRY TAKE NOTICE WE SHALL TAKE TESTIMONY BEGINNING THURSDAY MORNING MAY TWENTY FIFTH TEN OCLOCK AT OLD COLONY CLUB HOTEL BILTMORE NEW YORK CITY STOP FORMAL NOTICE AND NAMES OF WITNESSES FOLLOW BY MAIL

(SGD) PARKER & PROCHNOW

1609

LAW OFFICE OF
MONTGOMERY, HART & SMITH
959 THE ROOKERY
CHICAGO

MARCH 10, 1923.

Joshua R. H. Potts, Esquire,
Hartford Building,
Chicago, Illinois.

My dear Mr. Potts:—

We have had up with our Buffalo correspondents the matter of trying the case of Lathrop v. Bowman Dairy Company before Judge Geiger of Milwaukee. Owing to some other matters which require attention they cannot tell at this time whether this will be agreeable. As soon as I hear from them I will advise you.

1610

Very truly yours,
(SGD.) IRVING HERRIOTT

IH:TS

1611

LAW OFFICE OF
MONTGOMERY, HART & SMITH
959 THE ROOKERY
CHICAGO

March 21, 1923

Mr. Joshua R. H. Potts,
8 South Dearborn Street,
Chicago, Illinois.

My Dear Mr. Potts:—

The Buffalo counsel in the case of Lathrop vs Bowman Dairy Company are unwilling at this

1612 time to join with you in a request that the case be tried by Judge Geiger. It seems that they have developed what they consider to be additional defense and desire some further time to perfect it.

Very truly yours,

(SGD) IRVING HERRIOTT

III:TS

1613 MITCHELL & STAPLES
LAW OFFICES
SUITE 1144 PRUDENTIAL BLDG.
BUFFALO, N. Y.

April 7, 1924

Mr. Irving Herriott,
C/O Montgomery, Hart & Smith,
959 The Rookery,
Chicago, Ill.

Dear Mr. Herriott:

1614 Mr. Adams has been drawn for jury duty, likewise his General Manager, and both of them are tied up to such an extent that I have been unable to have a proper conference with Mr. Adams. The only time he has is in the evening and during that time he has to look after his business and his sick father, who has been near to death for several weeks.

I thought it was understood that Mr. Potts would give the exact figure which he is willing to accept in settlement of this suit and, in fact, of all

1615

claims which his client would have in the district in which this patent applies. If you can obtain this amount from him, we shall be in a better position to determine what action to take.

I may say to you that unless the amount which he will accept in full settlement of all claims arising out of this infringement of machines which have had to do with the drip-pan, we shall be obliged to take an appeal and will do so.

In case we appeal, perhaps you can arrange with him to have a short hearing before the Master and perhaps stipulate the amount of damages, to avoid the expense of a Referee. 1616

Will you, therefore, kindly take up this question with Mr. Potts and tell him that if the amount he will accept in full settlement of all such claims is as cheap as we could take the appeal, or approximately that amount, we shall be inclined to settle. If not, we should like to stipulate the amount of damages before the Master, enter our final decree and take our appeal. 1617

Mr. Adams will be on the jury all the remainder of this week, and I am leaving for Washington tomorrow to be gone the rest of the week. If you can take up these matters while I am away, we shall consider them immediately on my return the first part of next week and give you a definite decision.

I am sorry to be obliged to delay the matter at all, but the circumstances are such that we have been unable to hurry the consideration of the case. We have had to examine some of the legal ques-

1618

tions involved and have had patent opinions submitted to us, for which we had to wait.

I trust you will be able to hold the matter until the first part of next week.

Yours very truly,

(SGD) MITCHELL & STAPLES

FGM-EE

1619

April 10, 1924

Irving Herriott, Esquire,
C/O Montgomery, Hart & Smith,
959 The Rookery,
Chicago, Illinois.

Dear Mr. Herriott:

I have the copy of the letter you forwarded, from Mitchell & Staples, but I have not received your letter that was stated to have been mailed yesterday, but in response to the copy of the letter enclosed, will state that I gave you the amount of cost that we would be willing to accept without going to the trouble of an accounting, and $50.00 per machine royalty, but I do not feel like delaying this matter longer, as the Decree was entered on January 21st, nearly three months ago.

1620

If they wish to take an appeal, I have no objection whatever, and they may proceed at their pleasure.

Evidently because I have attempted to compromise and settle the matter, they consider it weakness.

1621

I do not understand what Mr. Mitchell means by "in the district where the patent is in force", as the patent is in force throughout the United States.

Awaiting your prompt response as to whether a settlement on this basis is satisfactory or not, which shall not include any machines except those paid for at the rate of $50.00 each, I remain

Very truly yours,

JRHP:MA

1622

NB PLEASE NOTE that after May 1, 1924, my Chicago Offices will be located at Suite 1500, New Burnham Building, 160 North LaSalle Street, corner Randolph.

MITCHELL & STAPLES
LAW OFFICES
SUITE 1144 PRUDENTIAL BLDG.
BUFFALO, N. Y.

1623

April 14, 1924

Joshua R. H. Potts, Esq.,
8 S. Dearborn St.,
Chicago, Ill.

Dear Sir:

Mr. Herriot, of Chicago, has just reached me by 'phone upon my return from Washington after an absence of a week, and advises me that you are pressing a decision in the Bowman Dairy Co. case.

1624 Owing to the severe illness of Mr. Parker with pneumonia, some misunderstanding arose by which this firm was not advised of the decree in the case until March 21st. It had been our understanding prior to that time that no reference or accounting had been ordered. It was, therefore, with the greatest surprise that we learned of the decree on the date mentioned. The writer immediately endeavored to get in touch with Mr. Parker's office,
1625 but because of Mr. Parker's illness and in the absence of Mr. Bean, it was impossible to get any information until a week later.

Meanwhile the writer had important engagements in Washington which required his attention. Mr. Orlando Adams was drawn on the jury and his father lay critically ill at home, thus preventing any of the parties from getting together.

We asked Mr. Herriott to learn from you the exact amount which you would accept in settlement of the case and to give us a general release.
1626 Mr. Herriott gave us the amount of your costs but did not state the amount you would accept in damages. We authorized him to advise you that, if the amount of damages and costs were at all reasonable, we would be inclined to advise a settlement rather than to appeal, but if there were any considerable amount of damages sought, we would take an appeal from the final decree as soon as it is entered.

We have been unable up to this writing to carefully examine the decree or to investigate the result of the decision, and the pressure of cases

which our office had been trying in our Supreme Court has made it impossible for any other member of our firm to take up the case until today. 1627

If you will write or wire us at once the total amount you will accept in full settlement of this case in your district and the terms of settlement, we shall consider it and advise you whether we shall settle or appeal.

If the case is to be appealed, it is our understanding that evidence as to the value of the infringement before a Master will have to be taken, and we would, in that event, prefer to stipulate the amount, if we can agree upon it, rather than to take any testimony. 1628

You may be assured that if the amount involved is considerable, we shall appeal the case, because we are advised and believe that the decree cannot stand and the circumstances under which it was granted by Judge Carpenter are sufficient evidence to us that the case was not properly considered by the District Court. However that may be, we are not seeking to incur additional expense to our client, if a settlement would result in the saving of that expense. 1629

We have advised Mr. Herriott that if you cannot await a proper negotiation between us, we shall proceed at once to appeal, or at least as soon as the decree can be entered, and we shall continue to fight this case at whatever cost there may be to our client or inconvenience to ourselves.

The fact that we are acting at long range makes

it difficult to hurry the matter and you should take this into consideration.

We are sending a copy of this letter to Mr. Herriott, and should like to have you get in touch with him and continue your negotiations with him in order to save time. It is solely a matter of expediency and cost, as we really do not care anything about your client's patent.

We understand that there are five machines in
1631 possession of the Bowman Dairy Co. which have been using the drip-pan feature affected by the decree, but we do not know what claim of damages you may make, and we think you will save time and effort if you will either communicate directly with Mr. Herriott or ourselves, giving us the final figure you will accept for a general release in this case, so far as the decree affects machines in your district. We understand, of course, that you will not release your claim in any other district.

We should also like to know what license you
1632 would require for the machine, if the Rice & Adams Corporation should care to continue its use.

Yours very truly,

(SGD) MITCHELL & STAPLES

FGM:EE

Correspondence 1633

MITCHELL & STAPLES
LAW OFFICES
SUITE 1144 PRUDENTIAL BLDG.
BUFFALO, N. Y.

April 16, 1924

Joshua R. H. Potts, Esq.,
8 South Dearborn St.,
Chicago, Ill.

Dear Sir:

In re: *Lathrop vs Bowman Dairy Co.*

Since writing you on the 14th, we have succeeded in having a conference with our client, Mr. Adams, and we wish to correct the statement made by the writer in our letter of the 14th to the effect that there are five machines used by the Bowman Dairy Company to which the drip-pan is attached. The Bowman Dairy Co. has four machines in use, but the drip-pan feature is attached to only three of them. 1634

We shall await a reply to our letter of the 14th before taking any further action in the matter.

Yours very truly, 1635

(SGD) MITCHELL & STAPLES

FGM:EE

May 23, 1924

Irving Herriott, Esquire,
209 South LaSalle Street,
Chicago, Illinois.

Dear Mr. Herriott:—

I have tried to get you several times this week over the phone but was unsuccessful.

1636 Not having heard anything further from your client, Rice & Adams Company in reference to making a settlement for the past infringements on the Blair patent owned by my client, Mr. Harry D. Lathrop, I am writing to say that unless a satisfactory seettlement is made in reference to it on or before the 28th day of May, we will proceed to take such course as we deem most effective to collect from all users of the infringing machine.

1637 I am writing you this letter in order that you may communicate with your client before we take the action we have in mind.

Awating your prompt response, I remain

Very truly yours,

JRHP:MA

LAW OFFICE OF
MONTGOMERY, HART & SMITH
959 THE ROOKERY
CHICAGO

1638 MAY 26, 1924

Joshua R. H. Potts, Esquire,
Suite 1500 Burnham Building,
Chicago, Illinois.

My Dear Mr. Potts:—

I have your letter of the 23rd regarding the Rice & Adams matter and have sent a copy of it to Mitchell & Staples. I certainly hope you will get together with them.

Very truly yours,

(SGD) IRVING HERRIOTT

IH-TS

POSTAL
—TELEGRAM—

RICHRJ 743AM 35NL VIA FX
BU BUFFALO NY MAY 29 1924

JOSHUA R POTTS
BURNHAM BLDG CHICAGO

ENGAGEMENT TRIAL FEDERAL COURT MONDAY MAKE IMPOSSIBLE CONSIDERATION YOUR LETTER MAY TWENTY THIRD TO HERRIOTT JUST RECEIVED STOP REQUEST EXTENSION ONE WEEK TO ENABLE CONFERENCE WITH CLIENTS ON RETURN FROM PITTSBURGH STOP WIRE OUR EXPENSE 1640

MITCHELL & STAPLES

(SGD) LATHROP VS BOWMAN DAIRY CO

MITCHELL & STAPLES
LAW OFFICES 1641
SUITE 1144 PRUDENTIAL BLDG.
BUFFALO, N. Y.

June 9, 1924

Mr. Joshua R. H. Potts,
8 South Dearborn Street,
Chicago, Ill.

Dear Mr. Potts:

Owing to the trial of the Pittsburgh case about which I wired you, we have been unable to come to any conclusion in regard to settling the Lath-

1642

rop case. We shall be engaged in Pittsburgh for several days longer and immediately from there I must go to Washington, which will prevent my being in Buffalo until Saturday, June 14th.

As I told you when in Chicago, I would be glad to bring about a fair settlement of this case, if possible, but I have not had the time to bring our clients around to any final decision. I felt that we had offered you a very large price and still be-

1643 lieve so, and shall hold that offer open until I return to the City.

You have an erroneous idea of the number of machines which Rice & Adams have manufactured, as I told you when in Chicago, but they are averse to making any settlement which would leave the matter open. If we could pay some reasonable sum which would close the matter, I shall be in favor of doing so and use my best efforts to bring it about, as soon as I can get free from the actions

1644 which we are defending.

I will take the matter up again when we return to Buffalo the last of this week. Meanwhile, I hope you will see your way clear to accept the amount which I suggested.

Yours very truly,

(SGD) FRD'K G. MITCHELL

FGM:B

1645

June 10, 1924

Mitchell & Staples, Esquires,
Suite 1144 Prudential Building,
Buffalo, New York.

IN RE LATHROP VS. RICE & ADAMS MACHINES:

Gentlemen:

In reply to your favor of the 9th instant, will state that in my letter I submitted our final proposition in this matter.

1646

It seems to me that you take the position of dictator of the terms though the loser in the expensive litigation that your client has been through.

The patience of my client is about exhausted, and I have instructions to proceed immediately without further consultation whenever I deem proper. I dislike to do this until I have received the final yes or no of your client.

Since our interview at Chicago, I have been gathering data on the locations and the owners of Rice & Adams machines that are an infringement on the Lathrop patent, and I assure you that I am not laboring under any delusions as to the number of machines that are in use, unless there are still numbers that I have not yet located.

1647

Awaiting your ropmpt response as to the final decision of your client, I remain,

Very truly yours,

JRHP:HA

1648 **Opinion holding patent valid and infringed**

DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,

against

RICE & ADAMS CORPORATION,
1649 a Corporation,
Defendant.

Joshua R. H. Potts, and Brayton G. Richards, Chicago, Illinois, and John S. Powers, Buffalo, New York, for Plaintiff.

Mitchell & Staples (Frederick G. Mitchell and Charles J. Staples), Buffalo, New York, for Defendant.

1650 *Hazel*, District Judge—The patent in suit to Blair, No. 880,713, granted March 3rd, 1908, for improvements in can washing machines, assigned to plaintiff, was litigated in the northern district of Illinois, eastern division, Judge Carpenter presiding, in an action brought by the plaintiff herein against the defendant Bowman Dairy Company and held valid and infringed as to the claims there in controversy. The defendant in that case was a user of a can washing machine manufactured by defendant in this action, which had been made a party defendant in the action against the user, but,

1651 on motion, the service of process was quashed on the ground that the Rice & Adams Corporation had no regular and established place of business in the district where the action was brought. After entry of the final decree, plaintiff brought action in this district, where defendant conducts its business, for infringement of the same claims of the patent that were in issue in the former case, and now contends that defendant is bound by the final decree in the action against Bowman Dairy Company, claiming that it conducted and con- 1652 trolled the defense at its own expense and later paid the judgment that was obtained. In short, that Rice & Adams Corporation was the real defendant and therefore bound by the decree as to all matters which were or might have been asserted in defense of the charge of infringement; that it cannot again be heard either as to the validity of claims, prior use, or non-infringement; and that if it was dissatisfied with the prior decree, it should have appealed the case. Defend- 1653 ant, however, denies that said decree is res adjudicata or binding upon it or that it is chargeable with privity with the Bowman Dairy Company, and testimony was taken upon this issue.

It is undoubtedly a rule of law that in a suit against the user of an infringing machine, where the manufacturer defended the action and became the real defendant, and a decree, that was affirmed on appeal, determined the claims of the patent to be valid, that such a decree became res adjudicata and the manufacturer cannot again be permitted

1654 Opinion holding patent valid and infringed

to defend an action subsequently brought on the same claims for infringement. Bemis Co. vs. Brill Co., 200 Fed. 749; Souffront vs. Compagnia Des Sucreries, 217 U. S. 475. And, if a manufacturer of an infringing device has complete charge and control of an action against a user, with the right of appeal, and the patent is held valid and infringed, the judgment of the court is conclusive upon him, in an action afterwards brought against
1655 him by the same complainant, as to all matters of fact or law that were involved therein and relating to the particular device which is the subject of controversy. D'Arcy vs. Staples, et al., 161 Fed. 733; Bigelow vs. Old Dominion, 225 U. S. 111; Rumford Chem. Co. vs. Hygienic Co., 215 U. S. 156; Greenleaf on Evidence, sec. 523; Robinson on Patents sec. 1176, Vol. 3; Gen. Elec. Co. vs. Morgan, 168 Fed. 52; Fish vs. Vanderlip, 218 N. Y. 29; Walz, et al vs. Agricultural Ins. Co. 282 Fed. 624. This principle finds unqualified support
1656 in Kessler vs. Eldred, 206 U. S. 285, wherein it is expressly stated that:

> "If rights between litigants are once established by the final decree of a court of competent jurisdiction, those rights must be recognized in every way, and wherever a judgment is entitled to respect, by those who are bound by it."

In Elliott vs. Roto Co., 242 Fed. 941, it was sought to estop the defendant from interposing its defense in an infringement suit on the ground that it was bound by a decree in a previous suit on the

same patent, in another federal jurisdiction, by the same plaintiff against a seller or a motor manufactured by defendant. Estoppel, however, was denied on the ground that in the earlier action, the defense was not open or avowed, and, accordingly the element of mutuality was lacking, the defendant being unaware that plaintiff knew that it was defending the case in place of the named defendant. The court ruled that whether the defendant was estopped or not depended upon the evidence; that one who relies on estoppel must prove that the defense was actually conducted by the defendant in the subsequent action. Such, I conceive, is the rule of law applicable to the present situation. The merits pertaining to the question of res adjudicata and privity may now be examined. 1657 1658

Admittedly the attorneys of record in this action also participated as counsel in the case against Bowman Dairy Co. They were associated with Parker & Prochnow, employed by Rice & Adams Corporation, as patent counsel in the prior action with the consent of Montgomery, Smith & Herriott, solicitors for defendant. Parker & Prochnow, or Mr. Bean, an associate, examined witnesses on deposition. It is shown that a Mr. Stevens and a Mr. MacFadyen, representatives of Rice & Adams Corporation, were present when depositions were taken in New York City and Chicago, and, furthermore, that Mr. Adams of the defendant corporation attended taking depositions at Buffalo. Indeed, there is abundant evidence showing that Rice & Adams Corporation was 1659

1660 Opinion holding patent valid and infringed

keenly interested in the pending litigation, even to the extent of its patent counsel arguing the case in court, and after the interlocutory decree, knew that Bowman Dairy Company, through its attorneys, was engaged with Mr. Potts in effecting a settlement; and, moreover, that it supplied the money, or part thereof to adjust the litigation. To apply the doctrine of res adjudicata or privity, however, it must be shown that Rice & Adams Corporation had full control of the defense, including the right of appeal from the decision of the court. This has not been sufficiently shown. Indeed, the witness, Herriott, who appeared throughout the litigation as attorney for the Bowman Dairy Company, testified that neither Parker & Prochnow, his counsel, nor Mitchell & Staples had any control over the defense interposed by the Bowman Dairy Company, and after the decision holding the patent valid and infringed, he was unwilling to take an appeal and advised his client not to appeal but to make a settlement; that he refused to permit Rice & Adams Corporation to appeal or control the final disposition of the case in any way, and that he independently initiated negotiations for a settlement, and, he added, if Rice & Adams Corporation had declined to contribute towards the settlement it would not have sold any more machines to his client.

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This evidence is not discredited, though I have considered the criticisms made upon it by counsel for plaintiff. Herriott's various references to Parker & Prochnow or to Mitchell & Staples as to

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adjournments or fixing dates of argument, do not prove that the latter had control of the case or the right of appeal from the decree of the court. Nor do the exhibit letters written by Mitchell & Staples to Herriott, or to plaintiff's counsel, relating to adjustment, staing that if the amount is not acceptable "we shall be obliged to appeal and will do so", overcome Herriott's evidence that his firm alone controlled the litigation; and, on his advice, defendant Bowman Dairy Company did not appeal or consent to an appeal. Since Rice & Adams Corporation was not a party, it had no right of appeal and cannot be deemed to have been bound by the decree, (Australian Knitting Co. vs. Gormley, 138 Fed. 92), which, in fact, was entered after settlement of the case and without defendant being aware of its entry. Plaintiff, however, presumably anticipating this conclusion, has given testimony bearing on the validity of the patent and its infringement.

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Thirteen claims are involved, of which the following are said to be infringed: 2, 3, 4, 9, 10, 11, 12 and 13. It will suffice to set out claim 12 which specifically embodies the entire structure, and the broad claim 13:

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> "12. A receptacle washing apparatus comprising a vat having a plurality of compartments, a circulating system connected to each vat, means to heat the contents of one or more of said vats, discharge pipes connected to said systems having upwardly directed discharge openings, opposed upright discharge pipes

1666 Opinion holding patent valid and infringed

having lateral facing discharge openings, an endless carrier comprising laterally spaced members adapted to receive thereon receptacles to be cleansed, said endless carrier having an upper horizontal run projecting beyond said vat at the intake end thereof, a receptacle beneath said projecting portion of said run of said carrier to receive material draining from receptacles positioned thereon, a housing mounted upon said vat though which the re-

1667 ceptacles are traversed upon said carrier, and lateral guides for the receptacles supported upon said projecting portion of said carrier.

13. A receptable washing apparatus comprising a support, a carrier adapted to receive receptacles thereon, cleansing medium pipes having discharge orifices directed toward said receptacles positioned thereon, and means adapted to receive from the receptacles, when positioned upon the carrier and in

1663 a condition uncontaminated by the cleansing medium, the material contained in said receptacles when in use, and discharged therefrom when said receptacles are positioned upon said carrier.

The patented washing machine comprises a long oblong table with an endless chain conveyor, tanks and vats underneath the table, and a hood over it. In the hood there is provided washing, sterilizing and drying instrumentalities for drying a series of inverted cans which rest on the chains as they are conveyed, for draining the residue or clinging

1669

milk or cream adhering to the interior of the cans, and then washing and drying them. At the feed end of the machine, there is a slanting drip pan or table projecting from the hood (fig. 3-41) where the cans discard their drippings, which, in their travel, first flow into a discharge spout. The movements of the cans are progressive and continuous during the operation of the machine. The drip pan apparatus is separate from the washing operation and entirely free from contact therewith.

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The alleged infringement relates exclusively to the can draining attachment by which the milk or cream is enabled to drip into a spout before the cans are rinsed. The utility and commercial success of the invention is not questioned. It quickly went into general use and has taken the place of prior can washing machinery. The machine of the defendant, according to the evidence, corresponds, at the forward end, to the drip-saving arrangement by which the cans pass into the machine and are washed and dried and then leave the machine

1671

at the opposite end substantially as described in the Blair patent. Defendant's machine is driven by pumps, motors and an oscillating device that intermittently moves the cans forward, as shown in plaintiff's exhibits 5 and 6, pictorial representations of defendant's machine. Its operation was observed in the Bowman Dairy plant and also in the plant of the defendant.

The defendant challenges the validity of the patent, mainly on the ground that the defendant, as early as 1902, prior to the Blair invention,

1672 Opinion holding patent valid and infringed

openly manufactured a can washing machine with a drip-saver attachment, and, incidentally, that the patent is anticipated by the prior art, and, in any event, defendant's structure is not an infringement.

First, as to anticipation. The prior art does not disclose a power-driven washing machine in combination with a drip-saver located away from the rinsing instrumentalities to avoid contamination
7673 by the cleansing medium.

In the Stubbs patent to which defendant's expert witness attaches importance, and which may fairly be regarded as the best reference, there is shown a milk can washing appliance having a milk-saver with each can inverted over a receptacle to allow the residue to drip into it, but there is no continuous or progressive traveling of the cans to the cleansing part of the machine. The construction of the jets was such that milk contact with the water was difficult to avoid without great
1674 delay. It was operated manually, each can requiring separate treatment. The patent was given consideration by the Patent Office at the time of passing upon the Blair application, and it was determined that the Blair improvement was patentable. The earlier Hood patents are not important references because of their failure to adapt a drip-saver; and Hood's later patent, wherein he included a can-draining feature, did not operate to prevent the saved milk from being contaminated by the rinsing operation; while his patent, No. 949,121, dated February 15th, 1910, which, in com-

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bination, included a device for savng the drippings, was subsequent to the date of the Blair application. It is true that separate elements of the combination claims in suit are found in different prior patents and publications in evidence, but none disclose the combinations of the elements of the claims in suit, and none avoid the contamination of the milk by the washing operation, and none were capable of performing the functions of the Blair patent. The changes embodied in the Blair machine and combination of old elements, may not now seem to have been a difficult accomplishment, but the problem of saving the remaining milk and cream and quickly washing the cans by cooperative means in rapid succession, evidently did not find easy solution until Blair invented the means for doing so. It was not an obvious expedient to do this, but involved the inventive skill to make and adapt the necessary changes and bring about a harmonious result.

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Testimony has been given on the part of defendant by various witnesses claiming to show that defendant in 1902, prior to the filing of the Blair application, constructed a bottle washing machine with a cooperative drip-saver embodiment. Such an apparatus is claimed to have been operated by Orlando Adams at a creamery on Allen Street in this city. It is described to have been a galvanized iron pan suspended below the track, and that it had an outlet, the bottles being fed into the machine, the loose milk dripping into the pan, and the bottles then washed. But the

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1678 witnesses testified solely from memory of an occurrence dating back twenty-five years, and, in the absence of a record or memorandum or machine produced to support the oral testimony, it cannot be accepted to overcome the showing of originality and novelty of the Blair patent. The rule with relation to prior use is that the court must be satisfied by the proof beyond reasonable doubt. It is held in Coffin vs. Ogden, 18 Wall. 120, and in the Barbed Wire Case, 143 U. S. 275, and in num-

1679 erous other adjudications, that every reasonable doubt should be resolved against the witnesses so testifying. I am, therefore, constrained to reject the testimony of defendant as to any prior use of a similar machine as that described in the claims.

The burden is upon plaintiff to prove infringement of its patent by defendant, and, in this connection, defendant contends that there has been a failure to identify any alleged infringing machine. that plaintiff rested its evidence, as to infringe-

1680 ment, upon the appearance of a machine sold to the Bowman Dairy Company by defendant, which embodied a step by step or oscillating movement of the cans, and not a continuous or progressive movement, as claimed by plaintiff. There was, however, additional evidence to substantiate the manufacture of machines by defendant of the same type as the Bowman Dairy machine. The varying means of moving the cans on an endless carrier as in the Blair machine, or an intermittent feed, as in defendant's, are believed to be mechanical equivalents for accomplishing the same pur-

pose. So also as to pipes, compartments, arrangements of drip-saver, means of heating the vats, arrangement of trough, hood, etc. 1681

Claim 13 broadly covers a carrier cleansing means and spraying device towards the conveyed cans, together with a drip-saver which receives the uncontaminated milk or cream. The endless chain carrier is not an element. The patent is not limited to a form of conveyance of the cans over the compartments in the tank, and defendant's adaptation of another form of conveyor and different arrangement of the details, vats, pipes, etc., do not avoid infringement, for such means are the substantial equivalents of the means described in the patent in suit. They function in the same way and achieve the same result. Other questions presented in argument need not be considered. 1682

The claims of the patent are valid and infringed by the defendant and a decree with costs may be entered.

Dated, May 31st, 1927. 1683

U. S. D. J.

1684 Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NEW YORK

HARRY D. LATHROP, Plaintiff, vs. RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D.*

1685

Decree

This cause having come on to be heard upon the pleadings, proceedings, and proofs herein, submitted on behalf of both parties, and after hearing counsel for plaintiff and defendant, and after due proceedings had, it is, after consideration ordered adjudged and decreed as follows:

1686 *First*: That the Letters Patent of the United States issued to James R. Blair on March 3, 1908, for improvements in CAN WASHING MACHINES, No. 880,713, are good and valid in law, particularly as to claims 2, 3, 4, 9, 10, 11, 12 and 13.

Second: That the plaintiff, Harry D. Lathrop is the lawful owner of said Letters Patent.

Third: That the defendant, Rice & Adams Corporation, a corporation, has infringed upon said Letters Patent, and particularly upon the said

claims 2, 3, 4, 9, 10, 11, 12 and 13, and upon the exclusive rights of the plaintiff under the same. 1687

Fourth: That the plaintiff recover of the defendant the profits to be accounted for by the said defendant, by reason of its said infringement of said claims of said patent, and that the plaintiff do recover of the defendant any and all damages which the plaintiff has sustained by reason of said infringement by the said defendant.

Fifth: This cause is hereby referred to as a Master of this court, who is hereby appointed, 1688 pro hoc vice, to check and state the amount of said gains, profits, and advantages, and to assess such damages and to report thereon with all convenient speed; and the defendant, its directors, officers, attorneys, servants and work-men, are hereby directed and required to appear before said Master from time to time as required, and to produce before him such books, papers, vouchers, and documents, and to submit to such oral examination as the Master may require.

Sixth: That the plaintiff do recover of the defendant his costs and disbursements of this suit 1689 to be taxed, and that all further questions be reserved until the coming in of the Master's report.

Enter JOHN R. HAZEL,
District Judge.

Entered June 23rd, 1927.
O. K. as to form.
JOSHUA R. H. POTTS,
Attorney for Plaintiff.
MITCHELL & STAPLES,
Attorney for Defendant.

1690

Petition for Appeal

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
1691 a Corporation,
Defendant.

To the Honorable John R. Hazel, District Judge of the United States District Court for the Western District of New York.

The above named defendant, Rice & Adams Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause, on the 23rd day of June, 1927, does hereby appeal from
1692 the said decree to the United States Circuit Court of Appeals for the Second Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit, under the rules of such court in such cases made and provided.

And your petitioner further prays that the pro-

ceedings upon the accounting in this court shall 1693
be stayed during the pendency of such appeal and
that the proper order relating to the security to be
required of said defendant be made.

Dated, Buffalo, N. Y., July 14th, 1927.

RICE & ADAMS CORPORATION,
By MITCHELL & STAPLES,
Solicitors for Defendant.

Order allowing appeal and staying Proceedings 1694

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant. 1695

On motion of Messrs. Mitchell & Staples, solicitors and counsel for defendant,

It is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the decree heretofore filed and entered herein on the 23rd day of June, 1927, be and the same is hereby allowed and that a certified transcript of the record, testimony, exhibits,

1696 stipulations and all proceedings, be forthwith transmitted to the said United States Circuit Court of Appeals.

It is further ordered that all proceedings upon the accounting in this cause shall be stayed during the pendency of such appeal, and that the bond on appeal be fixed at the sum of $1250.00.

Dated, Buffalo, N. Y., July 14th, 1927.

JOHN R. HAZEL,

1697 *United States District Judge.*

Assignment of Errors

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

1698

HARRY D. LATHROP, Plaintiff, *against* RICE & ADAMS CORPORATION, a Corporation, Defendant.	*In Equity No. 793-D.*

Now comes the defendant in the above entitled action and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court and entered on the 23rd day of June, 1927.

Assignment of Errors 1699

First: That the United States District Court erred in holding that letters Patent No. 880713 to James R. Blair, mentioned in the bill of complaint in this cause, or any of the claims thereof, are good and valid in law.

Second: That the United States District Court erred in holding that the defendant has infringed upon said letters patent or any of the claims thereof or upon any of the rights of the plaintiff under the same.

1700

Third: That the United States District Court erred in directing that the plaintiff recover of the defendant the profits to be accounted for by the defendant by reason of such infringement and in directing that the plaintiff recover of the defendant damages sustained by reason of such infringement.

Fourth: That the United States District Court erred in appointing a Master to check and state the amount of said gains, profits and advantages and to assess such damages and report thereon, and in directing the defendant, its directors, officers, attorneys, servants and workmen to appear before said Master and produce before him books, papers, vouchers and documents and to submit to such oral examination as the Master may require.

1701

Fifth: That the United States District Court erred in holding that the plaintiff was entitled to recover any costs and disbursements herein from the defendant and in directing that all further questions be reserved until the coming in of the Master's report.

1702 Assignment of Errors

Sixth: That the United States District Court, after denying the plaintiff's motion for a preliminary injunction and holding that the plaintiff was not entitled to such injunction, particularly erred in refusing to grant defendant's motion made before the trial for an order transferring the cause to the law side of the court under Equity Rule No. 22, and in denying a like motion made by defendant at the opening of the trial.

1703 *Seventh*: That the United States District Court erred particularly in denying to plaintiff the right to a trial by jury of the issues of infringement and damages which were the only questions at issue between plaintiff and defendant in said action.

Eighth: The United States District Court having decided in the motion for a preliminary injunction that infringement by the defendant had ceased and that the recovery of damages was sufficient protection for any past infringements, and having, therefore, denied that there was any basis for an
1704 injunction, the said Court erred particularly in holding that this action was one in equity and in not holding that it was an action where the plaintiff had a plain, adequate and complete remedy at law.

Ninth: That the United States District Court erred in not holding that the patented combination in suit was anticipated by the prior art and by the prior knowledge and use shown by defendant's witnesses.

Tenth: That the United States District Court erred in rejecting the testimony of defendant's

witnesses as showing prior knowledge and use of the combination of elements of the plaintiff's claims in suit. 1705

Eleventh: That the United States District Court erred in not holding that plaintiff failed to identify any alleged infringing machine manufactured by the defendant.

Twelfth: That the United States District Court erred in not holding that the endless chain carrier was an essential element of the Blair patent. 1706

Thirteenth: That the United States District Court erred in not holding that the varying means of moving cans, such as the intermittent feed of the defendant's machines, were not mechanical equivalents for the endless carrier of the plaintiff's patent.

Wherefore, the appellant prays that said decree be reversed and that the said United States District Court for the Western District of New York be directed to enter a decree reversing the decision of said Court in said cause and either dismissing the complaint herein or granting to appellant a new trial by jury of the issues in said suit. 1707

Dated, Buffalo, N. Y., July 12th, 1927.

MITCHELL & STAPLES,
Solicitors for Defendant.

1708 **Supersedeas Bond for Damages and Costs on Appeal**

KNOW ALL MEN BY THESE PRESENTS

That we, RICE & ADAMS CORPORATION, a corporation organized and existing under the laws of the State of New York, and having a regular and established place of business at Buffalo, in said State, as principal, and the National Surety Company of New York, as sureties, are held and
1709 firmly bound unto HARRY D. LATHROP in the sum of $1250.00, lawful money of the United States, to be paid to him and his heirs, executors or legal representatives, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, by these presents. Sealed with our seals, and dated this 14th day of July, 1927.

Whereas the above named RICE & ADAMS CORPORATION has prosecuted an appeal to the United States Circuit Court of Appeals for the
1710 Second Circuit, to reverse the decision and decree of the District Court of the United States for the Western District of New York, in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the above named RICE & ADAMS CORPORATION shall prosecute its said appeal to effect and answer all costs and damages if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

Dated, Buffalo, N. Y., July 14th ,1927.

Supersedeas Bond for Damages and Costs on Appeal 1711

RICE & ADAMS CORPORATION,
By J. P. McKINLEY,
President.
NATIONAL SURETY COMPANY,
By N. C. SPENCER,
Res. Vice-President.
WILLIAM F. KIMBERLY,
Res. Asst. Secretary.

(Seal)

1712

State of New York,
County of Erie,
City of Buffalo. } ss.

On the 14th day of July, in the year one thousand nine hundred twenty-seven, before me personally came J. P. McKINLEY, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Buffalo, N. Y.; that he is the PRESIDENT of the RICE & ADAMS CORPORATION, the corporation described in and which executed the above instrument; that he 1713
knew the seal of such corporation; that the seal affixed to said instrument was such corporate seal; and that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

LLOYD F. HATCH
Notary Public.

1714

Citation on Appeal

UNITED STATES OF AMERICA: SS.
THE PRESIDENT OF THE UNITED STATES.

TO HARRY D. LATHROP — GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Second Circuit,
1715 to be holden at the City of New York, within thirty days, pursuant to the assignment of errors filed in the Clerk's Office of the District Court of the United States for the Western District of New York, wherein Rice & Adams Corporation is the appellant and you are the appellee, to show cause, if any there be, why the decree rendered against said appellant as in the said assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

1716

WITNESSETH, the Honorable John R. Hazel, Judge of the District Court of the United States for the Western District of New York, this 14th day of July, 1927.

UNITED STATES DISTRICT JUDGE
JOHN R. HAZEL

Stipulation as to Record on Appeal 1717

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant. 1718

It Is Hereby Stipulated by and between the parties to the above entitled cause, by their solicitors, that the record in the appeal to the United States Circuit Court of Appeals for the Second Circuit, shall comprise the following:

1—Complaint, including exhibits attached thereto
2—Original Answer;
3—Supplemental Answer; 1719
4—Plaintiff's Interrogatories;
5—Defendant's Answers to Interrogatories;
6—Defendant's affidavits on motion for preliminary injunction; Opinion of District Court denying such motion, and Order entered thereupon;
7—Affidavit and Order to Show Cause why said cause should not be transferred from the Equity to the Law side of the Court; Opinion of the Court denying same, and Order entered upon such opinion.

1720 Stipulation as to Record on Appeal

8—Plaintiff's depositions de bene esse on trial of case as follows:

Clarence Edward Threedy,
Charles McEwan,
Richard Guenther,
Walter H. Paulson,
George E. McFadyen,
Harry D. Lathrop,
Jesse A. Holton,
7121 Jackson C. Thyng,
Frank S. Goodhue,
Thomas Prain,
James R. Blair.

9—Defendant's depositions de bene esse of

(a) Deposition of Robert P. Hains, taken before Commissioner on the 2nd day of August, 1926.

(b) Deposition of Orlando Adams, taken before Commissioner on the 22nd day of April, 1926.

1722 10—Minutes of the Trial before District Judge, May 6th, 1926, including correspondence reproduced on pages 167 to 209 inclusive;

11—Opinion of District Judge, dated May 31st, 1927, rendered on final hearing and decision of the case;

12—Interlocutory decree of the District Court entered June 23rd, 1927;

13—Petition for Appeal;

14—Order Allowing Appeal and Staying Proceedings;

15—Assignment of Errors;

16—Supersedeas Bond for Damages and costs on Appeal; 1723

17—Citation on Appeal;

18—This Stipulation;

19—Stipulation as to Equity Rule 75;

20—Stipulation *re* physical exhibits;

21—Exhibits as follows:

Plaintiff's cross-exhibit No. 11—Copy of Patent to Adams & Rice No. 745752;

Plaintiff's exhibits as offered at trial as follows: 1724

Plaintiff's exhibit No. 2—Copy of Blair Patent 880713 in suit.

Plaintiff's exhibit No. 25—Copy of VanGilder Patent No. 546205.

Plaintiff's exhibit No. 32—Copy of answer in Lathrop vs Bowman Dairy Co.

Plaintiff's exhibit No. 33—Copy of motion to amend answer in Lathrop vs Bowman Dairy Co.

Defendant's exhibit as follows:

Defendant's exhibit No. 8—Check of Irving Herriott of May 13, 1924, for $736.82, to plaintiff. 1725

Also the following Patents:

Stubbs .....No. 781692
Hood .....No. 864133
Hood .....No. 864132
Adams & Rice .....No. 745752
Rice & Adams .....No. 764222
Wright .....No. 850199
Schirmer .....No. 708738

1726 Stipulation as to Record on Appeal

Groterjan .....No. 639378
Gibbs .....No. 240404
Hodgdon .....No. 498549
which are Patents referred to in testimony of Robert P. Hains.
Also these Patents:
Hood No.864131
Wright .....No. 768836
22—Certificate of Clerk of the District Court.

1727 *It Is Further Stipulated and Agreed* that the physical exhibits referred to in the Stipulation re physical exhibits, shall be produced at the hearing of the appeal and may be considered by the court in connection therewith.

It Is Further Stipulated that this stipulation shall be considered as the praecipe on appeal and that the Clerk may prepare the original transcript of record as herein indicated.

1728 Dated, August 11, 1927.

JOSHUA R. H. POTTS,
Attorney for Plaintiff.

JOHN S. POWERS,
Solicitor and of Counsel for Plaintiff.

MITCHELL & STAPLES,
Attorneys for Defendant.

Stipulation and Order re Equity Rule 75

1729

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

In Equity No. 793-D.

1730

Upon the annexed stipulation of the solicitors for the respective parties in this action and on motion of Mitchell & Staples, solicitors for the defendant-appellant herein,

It Is Hereby Ordered that the record on appeal herein to the United States Circuit Court of Appeals for the Second Circuit shall contain all the testimony of the witnesses in said cause reproduced in the exact words of the said witnesses.

1731

Dated, Buffalo, N. Y., August 12th, 1927.

JOHN R. HAZEL,
United States District Judge.

1732 Stipulation as to Record on Appeal

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
1733 Defendant.

In Equity No. 793-D.

It Is Hereby Stipulated by and between the parties to the above entitled cause, by their solicitors, that the record on appeal herein to the United States Circuit Court of Appeals for the Second Circuit shall contain all the testimony of the witnesses in said cause reproduced in the exact words of the said witnesses and that the Court or a Judge thereof consenting, an order may be entered to such effect.

1734

Dated, Buffalo, N. Y., August 12th, 1927.

JOHN S. POWERS,
Solicitor for Plaintiff-Appellee.

MITCHELL & STAPLES,
Solicitors for Defendant-Appellant.

Stipulation in Regard to Physical Exhibits

1735

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

1736

It Is Hereby Stipulated by and between the attorneys for the respective parties to the above entitled action that the following exhibits need not be reproduced in the transcript of record but shall be sent to the United States Circuit Court of Appeals for the Second Circuit as physical exhibits.

PLAINTIFF'S EXHIBITS AS OFFERED IN DEPOSITIONS

1737

Plaintiff's exhibit No. 1—Catalogue.
Plaintiff's exhibit No. 1a—Catalogue.
Plaintiff's exhibit No. 2a—Assignment.
Plaintiff's exhibit No. 2b—Assignment.
Plaintiff's exhibit No. 2c—Assignment.
Plaintiff's exhibit No. 2d—License.
Plaintiff's exhibit No. 2e—License.
Plaintiff's exhibit No. 3—Certified copy of Decree in Lathrop vs. Dairo-Watkins-Dairymen's Mfg. Co.

1738 Stipulation in Regard to Physical Exhibits

Plaintiff's exhibit No. 5—Cut of Machine.

Plaintiff's exhibit No. 6—Cut of Machine.

Plaintiff's exhibit No. 8—Drawing.

Plaintiff's exhibit No. 8a—Drawing.

Plaintiff's exhibit No. 10—Name Plate.

Plaintiff's exhibit No. 10a—Name Plate.

Plaintiff's exhibit No. 11—Memoranda Slips.

Plaintiff's exhibit No. 12,

13

1739 —2 Photographs of machine.

Plaintiff's exhibit No. 14 — Holton Memoranda Book.

Plaintiff's exhibit No. 15—Pencil Drawing.

Plaintiff's exhibit No. 16—Bill of Emery & Booth.

Plaintiff's exhibit No. 17—Two bills of Wright-Ziegler Co.

Plaintiff's exhibit No. 18—Bill of Geo. W. Gale Lumber Co.

1740 Plaintiff's exhibit No. 19—Bill of David Whiting & Sons.

Plaintiff's exhibit No. 20—Bill of Elm Farm Milk Co.

Plaintiff's exhibit No. 21—Bill of American Tool & Machine Co.

Plaintiff's exhibit No. 23 — Daily Memornadum Book.

Plaintiff's exhibit No. 30-31—Certain office actions taken by United States Patent Office in connection with Blair Patent.

Stipulation in Regard to Physical Exhibits 1741

PLAINTIFF'S EXHIBITS AS OFFERED AT TRIAL

Plaintiff's exhibit No. 4a—Rice & Adams circular.

Plaintiff's Exhibit No. 5a—Part of Rice & Adams catalogue.

Plaintiff's exhibit No. 6a—Rice & Adams catalogue.

Plaintiff's exhibit No. 8a—Blue Print.

Plaintiff's exhibit No. 34 — Certified copy of Docket Entries in Bowman Dairy Co. suit. 1742

Plaintiff's exhibit No. 35—Correspondence between attorneys in Lathrop vs. Bowman Dairy Co.

DEFENDANT'S EXHIBITS

Defendant's exhibit No. 1 to 5—Marked for indentification on depositions taken on behalf of plaintiff and offered at trial.

Defendant's exhibit No. 6—Model of defendant's can washing machine made by witness Sable. 1743

Defendant's exhibit No. 7—Descriptive circular of Rice & Adams machinery.

Defendant's exhibit No. 9 — McNamee's pencil sketch of defendant's machine made in 1902.

Defendant's exhibit No. 10 — Picture of double-ended bottle-filling machine of R. G. Wright & Co.

Defendant's exhibit No. 11—Picture of milk-bottle-filling machine, smaller than defendant's.

Defendant's exhibit No. 12—Blueprint drawing of

1744

can-washer sent by witness Gressel to Boston, Mass. and returned to Buffalo.

Defendant's exhibit without number — Certified copy of complete file of Blair Patent.

It Is Further Stipulated that the following exhibits shall be included in the original transcript of record and reproduced in the printed copies thereof.

1745

Plaintiff's Cross-Exhibit No. 11—Copy of Patent to Adams & Rice, No. 745752.

Plaintiff's exhibits as offered at trial as follows:

Plaintiff's exhibit No. 2—Copy of Blair Patent 880713 in suit.

Plaintiff's exhibit No. 25—Copy of Van Gilder Patent No. 546205.

Plaintiff's exhibit No. 32 — Copy of answer in Lathrop vs. Bowman Dairy Co.

Plaintiff's exhibit No. 33 — Copy of motion to

1546 amend answer in Lathrop vs. Bowman Dairy Company.

Defendant's exhibit as follows:

Defendant's exhibit No. 8—Check of Irving Herriott of May 13, 1924, for $736.82, to plaintiff.

Also the following Patents:

Stubbs	No. 781692
Hood	No. 864133
Hood	No. 864132
Adams & Rice	No. 745752
Adams & Rice	No. 764222
Wright	No. 850199

Stipulation in Regard to Physical Exhibits 1747

Schirmer .....No. 708738
Groterjan .....No. 639378
Gibbs .....No. 240404
Hodgdon .....No. 498549

which are Patents referred to in testimony of Robert P. Hains.

Also these Patents:

Hood .....No. 864131
Wright .....No. 768836 1748

JOSHUA R. H. POTTS,
Attorney for Plaintiff.

JOHN S. POWERS,
Solicitor and of Counsel for Plaintiff.

MITCHELL & STAPLES,
Attorneys for Defendant.

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PLAINTIFF'S EXHIBIT NO. 32

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARRY D. LATHROP,
Plaintiff,
vs.
1751 RICE & ADAMS CORPORATION,
a Corporation,
and
BOWMAN DAIRY COMPANY,
a Corporation,
Defendants.

In Equity No. 2239

Answer of Bowman Dairy Company

Now comes Bowman Dairy Company, a defend-
1752 ant, and in its own behalf makes answer to the bill of complaint filed herein as follows:

The defendant now and at all times hereafter saving and reserving unto itself all and all manner of benefit and advantage by exception, or otherwise, which can or may be had or taken to the manifold errors, insufficiencies, uncertainties and imperfections in said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

Answer of Bowman Dairy Company 1753

(1) The defendant denies each and every allegation in said bill of complaint except as hereinafter admitted or specifically answered and avoided and requires strict proof of each and every allegation.

(2) The defendant is not advised, save by the bill of complaint, whether the plaintiff is a resident of the City of Chicago, County of Cook and State of Illinois, or a citizen of the State of Illinois, or elsewhere, and leaves the plaintiff to the proof thereof. 1754

(3) The defendant admits that it is a corporation duly organized and existing under the laws of the State of Illinois, and a citizen of said State of Illinois, and that it has its principal place of business at Chicago, in the County of Cook, State of Illinois.

(4) The defendant admits that Letters Patent of the United States, Number 880,713, were issued on the 3rd day of March, 1908, but denies that on or prior to the 21st day of December, 1906, James 1755
R. Blair, then residing at Boston, in the County of Suffolk and State of Massachusetts was the true, original, first and sole inventor of certain or any new and useful improvements in can washing machines; and denies that said improvements were not known or used by others in this country before the alleged invention thereof by said James R. Blair; and were not patented or described in any printed publication in this or any foreign country before his alleged invention thereof, or more than two years prior to his alleged application for let-

1756

ters patent of the United States, and were not in public use or on sale in this country for more than two years before his alleged application and were not abandoned by him prior to said application, and were not patented or caused to be patented by him or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his alleged application in this country; and denies that

1757 said James R. Blair on the 21st day of December, 1906, or at any time made application in due form of law to the Commissioner of Patents of the United States for Letters Patent on his said alleged invention and duly swore to the specification thereof; and denies that said Blair fully or in any respect complied with the law in such cases made and provided as regards any application to the Commissioner of Patents of the United States for Letters Patent on his alleged invention, and denies that proper proceedings were had on his

1758 alleged application and that Letters Patent No. 880,713 were duly issued for said alleged invention in conformity with the law and Statutes made and provided in such cases; and denies that said Letters Patent are good and valid in law and in equity, and enforceable as such.

(5) The defendant is not advised, save by the bill of complaint, whether said alleged patent has been assigned by mesne assignments or instruments in writing or otherwise, to plaintiff herein or to any other person, or whether said alleged assignments were duly and properly recorded in

1759

the United States Patent Office within three months from the date thereof or at any time, or whether said plaintiff herein now owns said patent and all or any rights under it, including the right to recover for past infringements, and therefore, denies the same and requires plaintiff to make strict proof thereof.

(6) The defendant denies that it is now or has been at any time within the Northern District of Illinois, Eastern Division, or elsewhere, making, using or selling can washing machines embodying the alleged invention claimed in said alleged letters patent, or that it is or has been assisting or cooperating with others in so making, using or selling and denies that the plaintiff has suffered any damage from any acts of this defendant.

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(7) The defendant denies that it has been or is conspiring or cooperating with Rice & Adams Corporation, or with any other party or parties, within the Northern District of Illinois, Eastern Division, or elsewhere, in making, using and selling can washing machines embodying the alleged invention in said letters patent, to the great and irreparable or any damage of the plaintiff.

1761

(8) The defendant denies that it was notified of said letters patent or of any alleged infringement thereof prior to the filing of the bill.

(9) The defendant denies that it is either separately or together with any party or parties prepared and ready to continue any infringement of said letters patent or do any illegal act and denies that plaintiff will suffer great and irreparable or

1762

any damage from any acts of this defendant, and denies that it has derived and received or is deriving and receiving great, or any gains and profits from any infringing acts against the plaintiff or any other party.

(10) Further answering, defendant avers that the alleged invention or improvement described and claimed in said Letters Patent No. 880,713 and every material and substantial part thereof was

1763 shown, patented and described prior to the alleged invention or discovery thereof by said James R. Blair, or more than two years prior to his application for patent therefor, in the following specified letters patent and in the following specified publications, to wit:

U. S. Letters Patent		
70,973	Davison	Nov. 19, 1867
193,222	Buell	July 17, 1877
291,117	Wicks	Jan. 1, 1884
1764 299,185	Von Schade	May 27, 1884
338,096	Merkle	1886
345,703	Lafferty	1886
369,424	Baker	Sept. 6, 1887
376,546	Pond	1888
393,769	Lorimer	1888
459,337	Strong et al	1891
490,100	Burt	Jan. 17, 1893
498,549	Hodgdon	May 30, 1893
508,740	Neely	Nov. 14, 1893
515,283	Bucklin	Feb. 20, 1894
536,785	Griesser	1895

544,880	Bouk et al	1895	
546,205	Van Gilder	Sept. 10, 1895	
547,307	Vollkommer	Oct. 1, 1895	
549,097	Baker	1895	
555,598	Donally	Mar. 3, 1896	
578,807	Barr et al	1897	
582,012	Donally	May 4, 1897	
618,795	Kellington	1899	
613,382	Meinshauser	1898	
616,284	Baker et al	1898	
616,737	Schuster	1898	1766
616,831	Elliott	1898	
625,762	Hayes	1899	
641,248	Ten Winkel	1900	
643,479	Des Brisay	Feb. 13, 1900	
648,138	Adams et al	Apr. 24, 1900	
660,314	Rosedale	Oct. 23, 1900	
663,142	Waring	Dec. 4, 1900	
676,920	Schreiber	June 25, 1901	
682,749	Roberts	1901	
688,152	Atwood	1901	
688,740	Kissel et al	Dec. 10, 1901	1767
690,563	Cobb	Jan. 7, 1902	
694,416	Phelan	Mar. 4, 1902	
700,925	Heurteuax	May 27, 1902	
708,738	Schirmer	Sept. 9, 1902	
721,824	Norkewitz	Mar. 3, 1903	
724,734	Pindstofte	Apr. 7, 1903	
736,762	Mitchell	Aug. 18, 1903	
745,752	Adams et al	Dec. 1, 1903	
748,585	Clifford	Jan. 5, 1904	
755,018	Laible	Mar. 22, 1904	

1768

762,522	Gillessen	June 14, 1904
764,222	Adams et al	July 5, 1904
781,692	Stubbs	Feb. 7, 1905
784,504	Rubin	Mar. 7, 1905
850,199	Wright et al	Apr. 16, 1907
821,812	Mather et al	1906
864,131	Hood	Aug. 20, 1907
864,132	Hood	Aug. 20, 1907
864,133	Hood	Aug. 20, 1907
934,404	Hood	Sept. 14, 1909
1,110,615	Eick	Sept. 15, 1914

1769

And letters patent of the Kingdom of Great Britain as follows:

No. 1,738 of 1900 to Gillies
No. 4,993 of 1902 to Cowey

Catalogue 1905 of Dairy Machinery & Construction Co., Derby, Conn.,

and also by other letters patent and publications at present unknown to this defendant, and which when known, defendant prays leave to insert herein by proper amendment.

1770

(11) Further answering, the defendant avers upon information and belief that the alleged invention described and claimed in said letters patent No. 880,713, and every material and substantial part thereof, was in public use or on sale in this country for more than two years prior to the application for said letters patent, and has been abandoned.

(12) Further answering, the defendant avers upon information and belief that the alleged inven-

tion described and claimed as new by said letters patent and attempted to be patented thereby, and every material and substantial part thereof, did not exhibit any material or substantial variation or change from the devices known in the art as it existed at the date of the alleged invention or discovery thereof by said James R. Blair, and did not at such date involve any exercise of inventive faculty and did not constitute subject-matter of invention proper to be secured by the grant of letters patent within the meaning and intent of the Statutes of the United States relating to patents for inventions, but was an unpatentable aggregation.

(13) And further answering, the defendant avers upon information and belief that said Letters Patent are invalid, void and of no effect in law for the following reasons:

(a) Because the alleged invention described and claimed in said letters patent and every material and substantial part thereof had been invented, produced and used and was known prior to the alleged invention thereof by said James R. Blair, to the following named persons, firms and corporations in and at the following named places, to wit:

Charles S. Adams, Albert J. Rice and O. Adams, of Buffalo, N. Y. at said Buffalo and elsewhere.

R. G. and K. K. Wright of Buffalo, N. Y. at said Buffalo and elsewhere.

C. H. Hood and H. P. Hood & Sons of Charles-

1774 town, Mass. at said Charlestown and elsewhere.

Joseph Willmann of Shelton, Conn. and Dairy Machinery and Construction Co. of Derby, Conn. at said Shelton and Derby and elsewhere.

Thomas Sharlow and C. H. Tilson of New York, N. Y. at said New York and elsewhere.

John W. Charlton of New York, N. Y. at said New York and elsewhere.

1775 and by other persons, firms and corporations at the present time unknown to defendant, but which when known, defendant prays leave to insert herein by proper amendment.

(b) Because said alleged invention described and claimed in said Letters Patent No. 880,713, and every material and substantial part thereof was known to and in public use or on sale in this country for more than two years prior to the application of said James R. Blair for said patent,

1776 by the following persons, firms and corporations at the following named places, to wit:

C. S. Adams, A. J. Rice and Rice & Adams of Buffalo, N. Y. at said Buffalo and elsewhere.

Joseph Willmann & Dairy Machinery & Construction Co. respectively of Shelton and Derby, Conn. at said Shelton and Derby and elsewhere.

Thomas Sharlow and C. H. Tilson of New York, N. Y. at said New York and elsewhere.

John W. Charlton of New York, N. Y. at said New York and elsewhere.

and by other persons, firms and corporations and at other places at this time unknown to the defendant, but which when known, defendant prays leave to insert herein by proper amendment. 1777

(c) Because said James R. Blair surreptitiously or unjustly obtained the patent for that which was in fact the invention of another, who was using reasonable diligence in adapting and perfecting the same.

(14) Further answering, defendant is informed and believes and therefore avers that said patent No. 880,713 was and is without value and merit commercially. 1778

(15) Further answering, defendant is informed and believes, and therefore avers that no proper notice of the plaintiff's alleged rights herein has been given to defendant or to the public as required by Section 4900 R. S., by marking machines or apparatus embodying the alleged invention of said letters patent with the words "Patented" and the date of the patent. 1779

WHEREFORE, the defendant prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

BOWMAN DAIRY COMPANY
By MONTGOMERY HART & SMITH
Solicitors

CHARLES W PARKER
Of Counsel

1780 PLAINTIFF'S EXHIBIT NO. 33
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HARRY D. LATHROP,
Plaintiff,
vs.
BOWMAN DAIRY COMPANY,
1781 a Corporation,
Defendant.
In Equity 2239.

Motion to Amend Answer

Now comes the defendant, Bowman Dairy Company, by its attorney, and moves to amend the answer herein as follows:

By inserting at the end of the list of United
1782 States patents set forth on page 5 of the answer, the following:

207,439	Pflueger	August 27, 1878
490,033	Moore	Jan. 17, 1893
574,075	Robbins	Dec. 29, 1896
617,566	Dreyer	Jan. 10, 1899
689,067	Demerath	Dec. 17, 1901
795,040	Hopkins	July 18, 1905

BOWMAN DAIRY COMPANY,
By CHARLES W. PARKER,
Counsel.

Entry of this amendment is hereby consented to.

Motion to Amend Answer 1783

JOSHUA R. H. POTTS,
Counsel for Plaintiff.

Amendment approved and ordered entered.
U. S. District Judge.

March 1922.

In the United States District Court
For Northern District of Illinois
Eastern Division

I, Charles M. Bates, Clerk of the District Court of the United States of America, for the Northern 1784
District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of Motion in the matter of Harry D. Lahtrop vs. Bowman Dairy Company, a corporation, No. 2239 as same appears from the original filed in said Court on the 3rd day of March, A. D. 1922 and now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District this 3rd day of May, A. D. 1926. 1785

(Seal of Court)
(SEAL OF COURT)

CHARLES M. BATES,
Clerk.

DEFENDANT'S EXHIBIT NO. 8

(Copy of Check)

MONTGOMERY, HART & SMITH

Attorneys At Law

The Rookery Chicago

No. 18985

Chicago, May 13, 1924

PAY TO THE ORDER OF *Harry D. Lathrop* $736.82/xx

Seven Hundred Thirty-six and 82/xx Dollars

MONTGOMERY, HART & SMITH

596

Charter Member Federal Reserve Bank of Chicago

To CENTRAL TRUST COMPANY OF ILLINOIS

Chicago

By IRVING HERRIOTT

2-23

(Indorsement)

Pay to the Order of

PEOPLES STOCK YARDS & STATE BANK

No. 376 The Lathrop-Paulson Co. No. 376

1786 1787 1788

Plaintiff's Cross-Exhibit No. 11

598

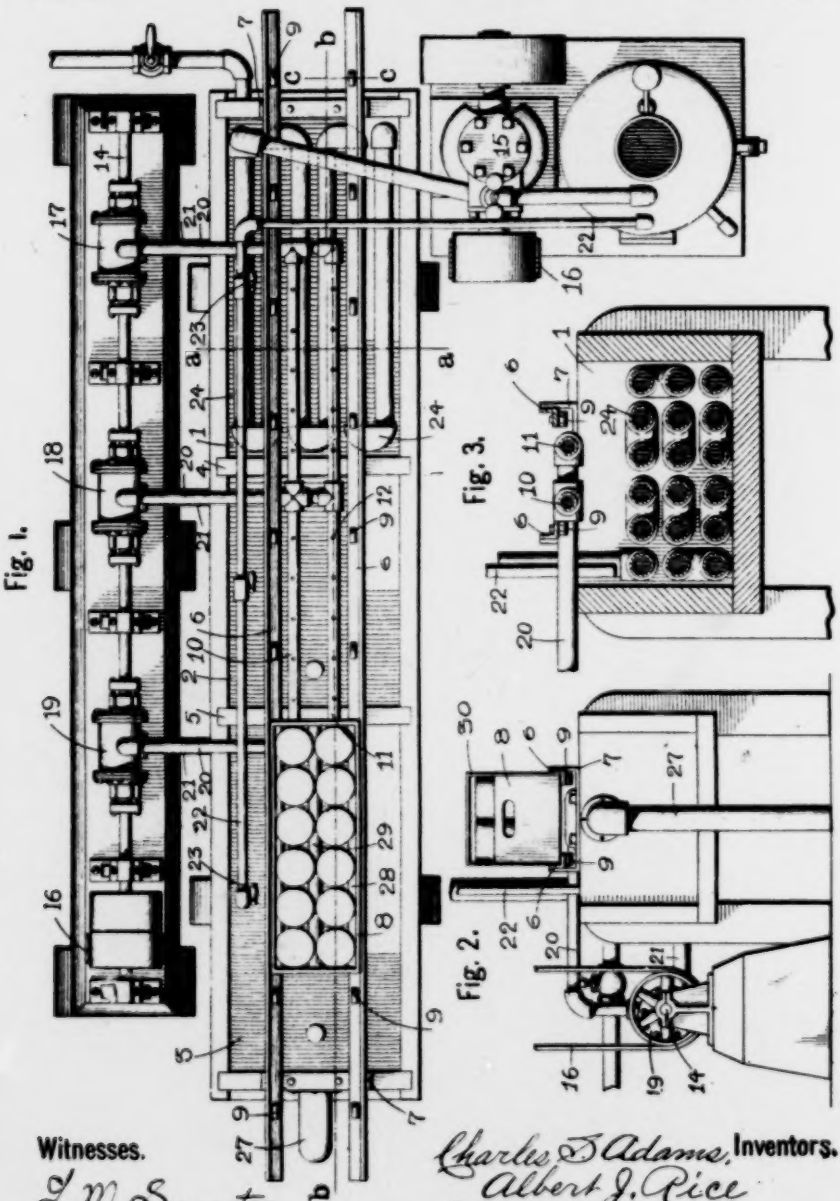
No. 745,752. PATENTED DEC. 1, 1903.

C. S. ADAMS & A. J. RICE.

METHOD OF CLEANING AND STERILIZING MILK BOTTLES, &c.

APPLICATION FILED AUG. 1, 1903.

NO MODEL. 2 SHEETS—SHEET 1.



Witnesses.
L. M. Saugster
Geo. A. Neubauer.

Inventors.
Charles S. Adams,
Albert J. Rice
by A. J. Saugster
Attorney.

600

No. 745,752. PATENTED DEC. 1, 1903.

C. S. ADAMS & A. J. RICE.

METHOD OF CLEANING AND STERILIZING MILK BOTTLES, &c.

APPLICATION FILED AU[illegible]. 1, 1903.

NO MODEL. 2 SHEETS—SHEET 2

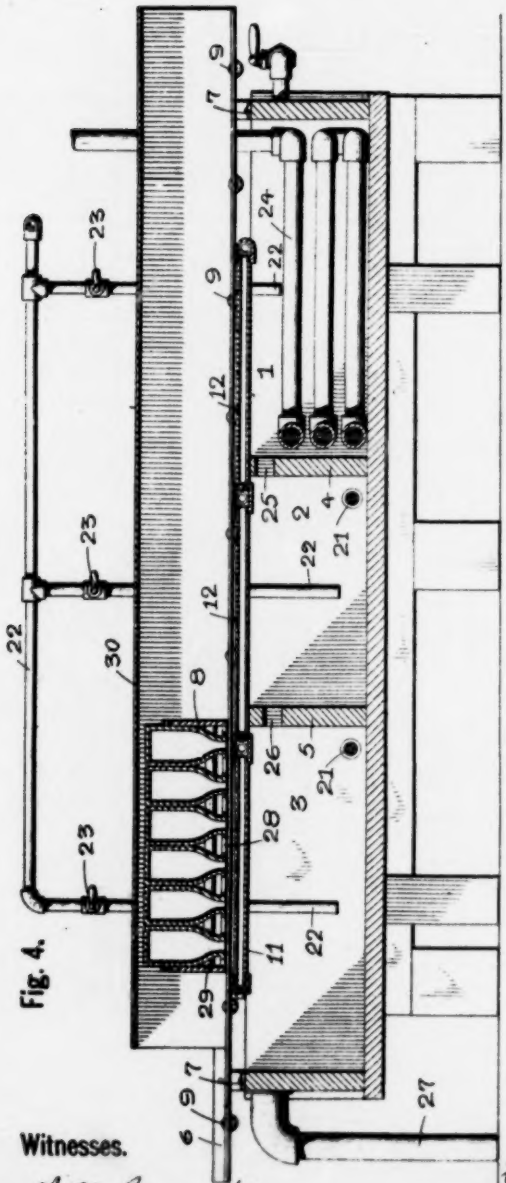


Fig. 4.

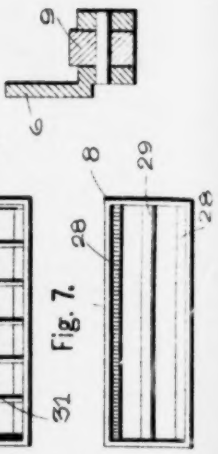


Fig. 8.

Fig. 6.

Fig. 7.

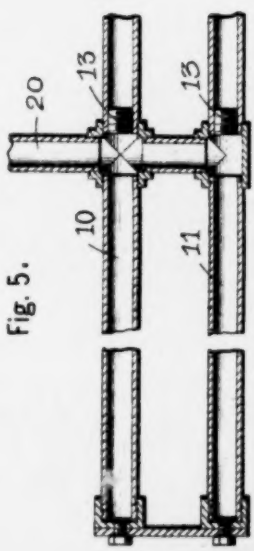


Fig. 5.

Witnesses.

L. M. Bangster

Geo. A. Neubauer.

Inventors.

Charles S. Adams.

Albert J. Rice.

By A. J. Langstaff Attorney.

No. 745,752. Patented December 1, 1903.

UNITED STATES PATENT OFFICE.

CHARLES S. ADAMS AND ALBERT J. RICE, OF BUFFALO, NEW YORK.

METHOD OF CLEANING AND STERILIZING MILK-BOTTLES, &c.

SPECIFICATION forming part of Letters Patent No. 745,752, dated December 1, 1903.

Application filed August 1, 1903. Serial No. 167,893. (No model.)

To all whom it may concern:

Be it known that we, CHARLES S. ADAMS and ALBERT J. RICE, citizens of the United States, residing at Buffalo, in the county of Erie and State of New York, have invented a certain new and useful Improved Method of Cleaning and Sterilizing Milk-Bottles and Similar Articles, of which the following is a specification.

This invention relates to an improved method of cleaning and sterilizing milk-bottles and similar articles, which consists in exposing the bottles to be cleaned to a plurality of jets of water under strong pressure which successively increase in temperature.

The object of the invention is to thoroughly clean and sterilize bottles or the like in a simple and comparatively rapid manner and to obviate the danger of breakage by heating the bottles gradually.

For a description of the preferred form of apparatus employed reference is to be had to the accompanying drawings, in which—

Figure 1 represents a plan view of the apparatus. Fig. 2 is an end elevation of the apparatus looking in the direction of the arrow V, Fig. 1, with the boiler and engine omitted. Fig. 3 is an enlarged cross-section through the tank on line *a a*, Fig. 1. Fig. 4 is a vertical longitudinal section on line *b b*, Fig. 1. Fig. 5 is a central longitudinal section through a fragment of the cleaning-pipes. Fig. 6 is a detached plan view of the box for holding pint bottles. Fig. 7 is a detached plan view of the box for holding quart bottles. Fig. 8 is a section on line *c c*, Fig. 1, through one of the angle-iron tracks.

In the preferred apparatus shown like numerals designate like parts.

The preferred type of apparatus herein shown forms the subject of a companion application, Serial No. 114,871, filed July 9, 1902.

A long rectangular-shaped tank or trough is divided into three compartments 1, 2, and 3 by transverse partitions 4 and 5. Two parallel angle-irons 6 are supported above the top of the trough and extend longitudinally throughout its length, being attached to the cross-irons 7, which extend transversely across the top of the trough. These angle-irons 6 form tracks on which boxes 8, containing bottles in inverted position, are moved and are arranged in opposed position with their horizontal portions extending inwardly toward each other and from the lower extremity of their vertical portions. Rollers 9 may be placed in the horizontal portions of the angle-irons to facilitate the moving of the boxes. Two pipes 10 and 11 are supported on the trough beneath the tracks and extend longitudinally thereof and are each provided with a series of vertical openings 12, which are arranged at regular intervals in the pipes. These pipes 10 and 11 extend throughout the length of the trough and are each divided into three separate and non-communicating parts by plugs 13. A horizontal shaft 14 is arranged at one side of the trough and is connected to an engine 15 of any well-known form by a belt 16 or other power-transmitting means. Three rotary pumps 17, 18, and 19 are mounted so that the shaft 14 passes through them. An outlet-pipe 20 is connected at the top of each rotary pump and extends into connection with one part of the pipes 10 and 11. An inlet-pipe 21 connects at its respective ends to the lower portion of each compartment and the lower portion of each pump. The water in the compartments is first heated by means of steam-pipes 22, which extend from the boiler of the engine and have their outer ends projecting into the compartments beneath the surface of the water to discharge the steam therein. These pipes are provided with shut-off valves 23, which are opened when the compartments are first filled with water to heat the same. After the water in the compartments reaches the desired temperature the valves 23 are closed, and the succeeding water as it enters is maintained in heated condition by means of a coil of pipe 24, placed in the compartment 1 and connected to the exhaust of the engine.

The jets are spaced or separated according to the articles to be cleaned. For instance, the jets used for washing milk-bottles or the

like, which have their mouths separated equally from each other, are arranged at regular intervals, so that all the jets will be vertically below the center of the bottle-mouths when the bottles are moved into a position vertically above said jets. By this means the interior of all of the bottles is thoroughly washed. The exterior surface of the bottles is washed by the jets as the bottles are moving from a position above one compartment to a position above another compartment.

The partition 4 between compartments 1 and 2 is provided with an opening 25 near the top, which permits the water to flow into compartment 2, and the partition 5 between compartments 2 and 3 has a similar opening 26, which permits the water to pass into compartment 3. The water as it flows from compartment 1 through compartments 2 and 3 is gradually cooled by atmospheric temperature, and substantially the same water is used in each compartment, thereby economizing in the volume of water used. The arrangement of the compartments is such that the water is in its cleanest and hottest conditions when used in compartment 1, into which it first passes, as before described, and over which the bottles receive their last washing. The water is in its coolest condition in compartment 3, where the bottles receive the first cleaning. The advantage of this is that as the bottles advance over the jets they become gradually cleaner and are exposed successively to water which becomes gradually cleaner and hotter, and thus are thoroughly cleaned and sterilized without danger of breakage by sudden expansion.

A washing compound of any well-known composition may be used, if desired, in compartment 3 and perhaps compartment 2 to assist in cleaning unusually dirty bottles.

The object in using pumps is to secure strong pressure of water in the cleaning-pipes 10 and 11, and thus secure sufficient hydraulic force to thoroughly clean off the surface of the bottles.

The waste water is conducted from compartment 3 by a pipe 27.

The boxes for containing the large bottles, such as quart bottles, are each provided with two cleats 28, secured to the interior thereof, and a central brace 29, so that two rows of bottles can be supported in inverted position in each box. A long rectangular cover 30 is placed over the trough to prevent the water spurting out over the top. The boxes for containing small bottles, such as pint bottles, are provided with a series of additional transversely-extending cleats or braces 21, substantially as shown in Fig. 6, to separate the bottles of each row from each other, and thus arrange their mouths at substantially the same distance from each other that the large bottles occupy in the boxes for containing said large bottles.

This improved method of cleaning and sterilizing is preferably carried out as follows: The dirty bottles are arranged in the boxes in inverted position and the boxes are placed on the tracks and pushed through between the trough and cover 30, passing successively above the various jets of water. The boxes are placed one by one on the tracks and stand for a short interval above each compartment, the movement of a new box on the tracks moving the preceding boxes one step forward. By this means the boxes successively stop over each series of jets, which enables the water to thoroughly clean both the inside and outside of the bottles. The bottles are first moved over compartment 3, where they are washed by jets of moderately-warm water, then advanced over compartment 2, where they are subjected to jets of still hotter water, and finally moved above compartment 1, where the washing is finished and the bottles sterilized by jets of water of a temperature at or near the boiling-point. In some instances jets of live steam may be employed in lieu of the water-jets in compartment 1 in order to make absolutely certain of the sterilization of the bottles. From this arrangement of the compartments of the trough the bottles are exposed to water of increasing temperature as they pass through, as before described. The bottles are thus gradually heated and expanded, which prevents breakage. The water is spurted through the openings 12 with sufficient force by the pumps 17, 18, and 19 to completely clean both the inside and outside of the bottles, and the boiling condition of the water in compartment 1 thoroughly sterilizes the same.

By this improved method the bottles are thoroughly and rapidly cleaned by the action of water all over without the aid of brushes, and are sterilized without danger of breakage, owing to the manner in which they are gradually heated by successive exposures to increasing temperatures.

We claim as our invention—

1. An improved process for cleaning and sterilizing milk-bottles or the like, which consists in exposing the bottles to be cleaned to a plurality of jets of water under strong pressure which successively increase in temperature, substantially as set forth.

2. An improved process for cleaning and sterilizing milk-bottles and the like, which consists in slowly passing the bottles in inverted position above a series of jets of water under strong pressure, the temperature of the successive jets gradually increasing from moderately-hot water to boiling water as the bottles move forward, substantially as set forth.

3. An improved process for cleaning and sterilizing milk-bottles and the like, which consists in moving the bottles in inverted position over a long trough and exposing them

to jets of heated water under strong pressure, the temperature of the water gradually increasing from one end of the trough to the other, substantially as set forth.

4. An improved process for cleaning and sterilizing milk-bottles or the like, which consists in exposing the bottles to be cleaned to a plurality of heated jets of successively-increasing temperature, substantially as set forth.

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Witnesses:
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Plaintiff's Exhibit No. 2.

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No. 880,713. PATENTED MAR. 3, 1908.

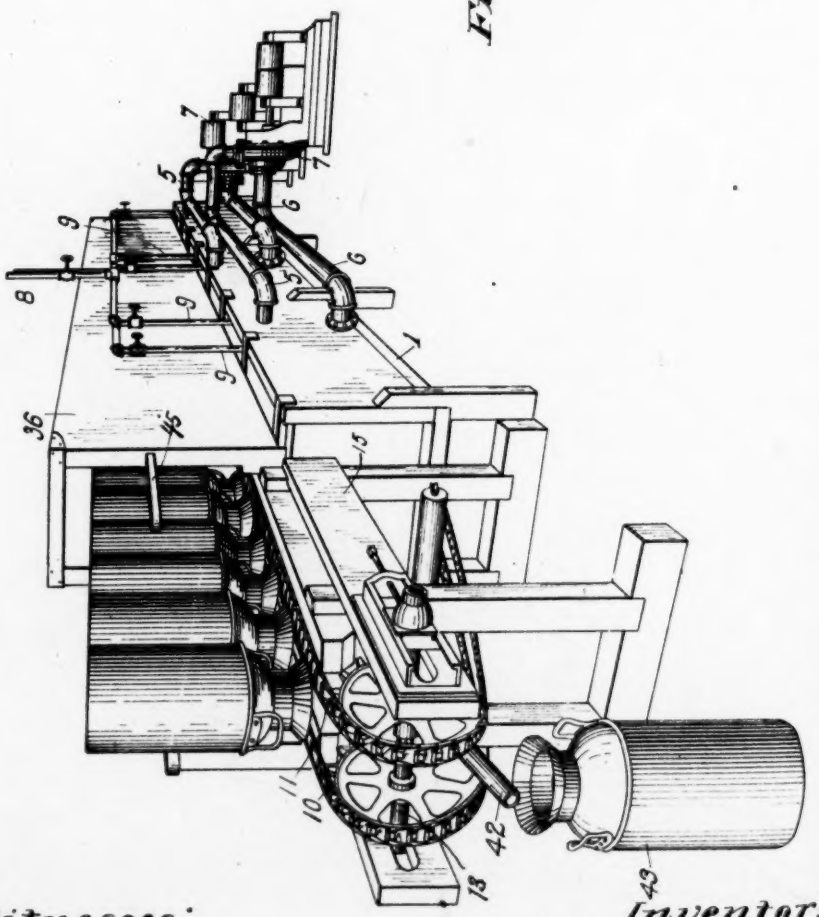
J. R. BLAIR.

CAN WASHING MACHINE.

APPLICATION FILED DEC. 21, 1906.

4 SHEETS—SHEET 1.

Fig 1.



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4 SHEETS—SHEET 2.

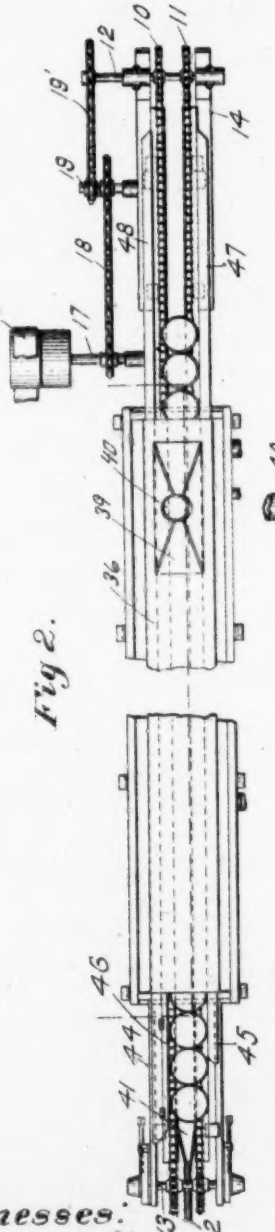

Fig 2.

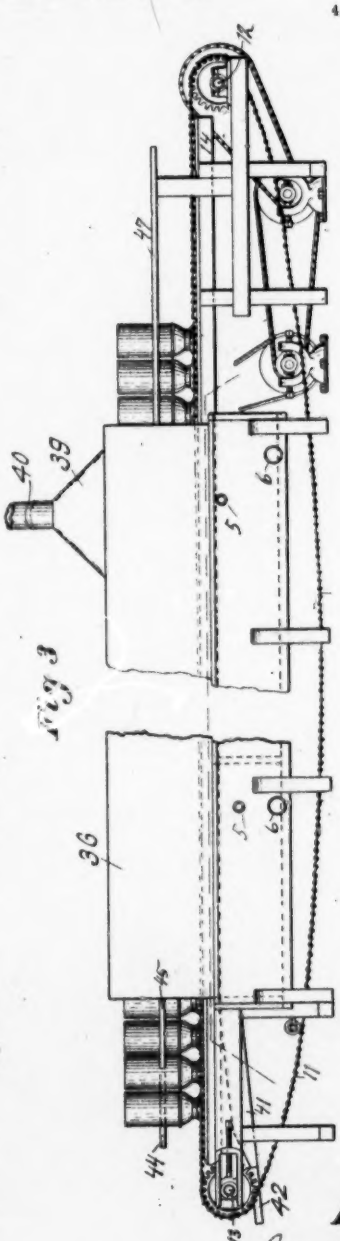

Fig 3

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4 SHEETS—SHEET 3.

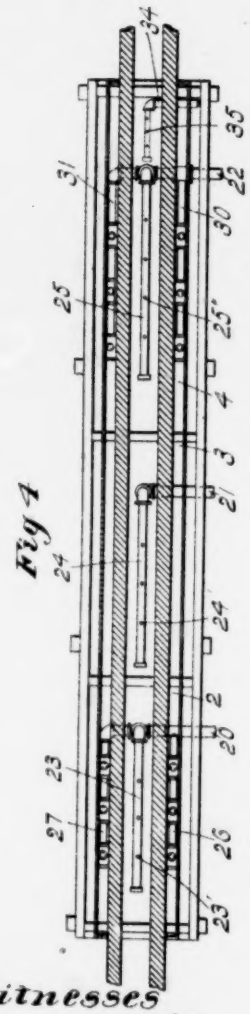

Fig 4

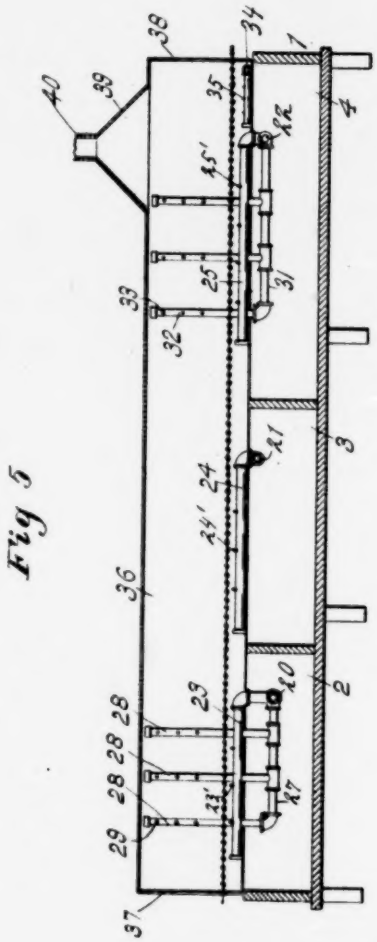

Fig 5

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4 SHEETS—SHEET 4.

Fig 7a

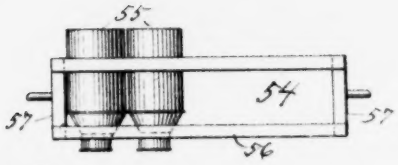


Fig 6.

Fig 8.

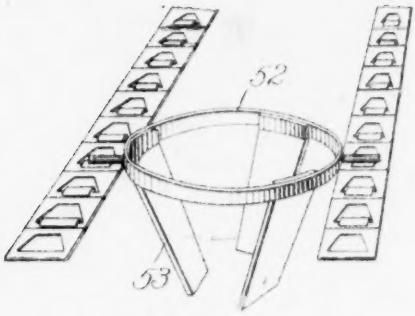
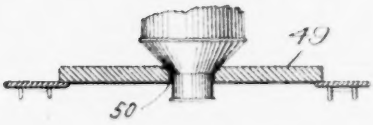


Fig 7.



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CAN-WASHING MACHINE.

No. 880,713. Specification of Letters Patent. Patented March 3, 1908.

Application filed December 2, 1906. Serial No. 348,892.

To all whom it may concern:

Be it known that I, JAMES R. BLAIR, a citizen of the United States, residing at Boston, in the county of Suffolk, State of Massachusetts, have invented an Improvement in Can-Washing Machines, of which the following description, in connection with the accompanying drawings, is a specification, like letters on the drawings representing like parts.

This invention relates to apparatus for washing milk and other cans, pails and receptacles of various types, whereby such receptacles may be rapidly and thoroughly cleansed and preferably sterilized, in a simple and expedient manner.

In order that the principles of the invention may be clearly set forth, I have disclosed one type or embodiment thereof in the accompanying drawings, wherein

Figure 1 is the perspective view of one form of apparatus herein shown as used for washing milk cans but of general application; Fig. 2 is a plan view of the washing apparatus shown in Fig. 1, the water circulating pipes and pumps being omitted; Fig. 3 is a side elevation of the structure shown in Fig. 2; Fig. 4 is a longitudinal horizontal section of the middle portion of the apparatus shown in Fig. 2, the can conveying mechanism being omitted to illustrate parts beneath the same; Fig. 5 is a vertical central section of the middle portion of the apparatus shown in Fig. 2; Fig. 6 is a perspective view of a modified form of can or receptacle support positioned for use and that may be employed in the practice of my invention. Fig. 7 is a vertical transverse section of the support shown in Fig. 6; Fig. 7ª is a side elevation of another modification of a can or receptacle supporting rack that may be employed in the practice of my invention; and Fig. 8 is a perspective view of another form of can or receptacle supporting mechanism.

Having reference to the single type or embodiment of the invention herein selected for illustration and referring to Figs. 1 to 5 inclusive, the main or supporting frame of the apparatus is represented at 1, and herein comprises a vat or tank preferably divided by transverse partitions into compartments 2, 3 and 4 (Figs. 4 and 5) in each of which the desired washing medium may be placed. While I may employ any suitable washing or cleansing media, in the present type of the invention, I contemplate employing an alkali water in compartment 2, cold water in receptacle 3 and hot water in compartment 4, and to that end preferably employ (Fig. 1), a circulating system for each compartment, two such systems being here indicated, and each comprising an inlet pipe 5, a return pipe 6, and a pump 7, of any suitable type, rotary pumps being herein indicated. In this manner water may be continually withdrawn from each compartment by a pump, returned under pressure and discharged through the jet pipes to be described, with sufficient pressure thoroughly to cleanse the receptacles under treatment. Any suitable provision may be employed to heat the water in any desired receptacle and herein for that purpose is shown a steam inlet pipe 8, having branch pipes 9, leading into each receptacle and suitably controlled.

While the milk cans or other receptacles to be cleansed may be fed over the compartment or compartments of the tank or vat in any suitable manner, in the present embodiment of the invention there is indicated for that purpose a pair of laterally spaced endless chains 10 and 11, mounted at opposite ends of the run thereof for equal and simultaneous movement upon horizontally disposed shafts 12 and 13, preferably adjustably mounted so that any slack may be taken up in any suitable manner, as upon standards or uprights 14 and 15, located at opposite ends of the tank or vat 1, and alined therewith, it being apparent that if desired, the chains or receptacle conveying mechanism may be suitably mounted upon the vat. I prefer, however, to mount the chains in the manner indicated, as thereby an extended, exposed portion of the chains is presented at both the receiving and discharging ends thereof, as clearly indicated in Figs. 1 to 3 inclusive, thus permitting the more ready handling of the receptacles at said points. The chains 10 and 11 may be, as represented in Fig. 1, supported upon longitudinally extending guides if desired.

The chains 10 and 11 may be driven in any suitable manner as by a belt 16, conveying power from any suitable source to a horizontally disposed shaft 17 connected by a sprocket chain 18, shaft 19, and sprocket chain 19' to the shaft 12, the chains 10 and 11 being driven at any desired rate of speed, and the upper run thereof traveling from left to right, viewing Figs. 1, 2 and 3.

Within or over each compartment 2, 3 and

4 of the tank or vat, there is, in the present type of the invention arranged a transverse pipe 20, 21 and 22, respectively, each connected with one of the circulating systems whereby water may be forced by the respective pumps through such pipes and discharged therefrom in any suitable manner against the cans or receptacles to be washed. Herein are indicated for the purpose, longitudinally disposed extensions 23, 24 and 25, leading from the inlet pipes 20, 21 and 22 respectively and disposed beneath and axially in line with the path or travel of the chains 10 and 11 and between the same, said longitudinal extensions having a series of perforations 23′, 24′ and 25′, whereby the water or other cleansing medium may be jetted upwardly, and, in the present embodiment of the invention, into the interior of the cans or receptacles. While said pipes 20, 21 and 22 may each be provided with extensions permitting the discharge of water in jets or otherwise, against the outer surface of the cans or receptacles, herein the pipe 20 is shown as provided with side extensions 26 and 27, substantially parallel with the longitudinal extension 23 and having uprising therefrom, vertically disposed pipes 28, with jetting orifices 29. The pipe 21 is not herein shown as provided with extensions permitting the discharge of water therefrom against the outer surface of the cans or other receptacles, but it is apparent that such extension may be provided within the scope of the invention. The pipe 22 is shown as provided with extensions 30 and 31, having upright portions 32, upon opposite sides and jetting orifices 33. Preferably in the practice of the invention the cans or receptacles are subjected to a steam or other sterilizing bath and this is preferably done as the final step in the cleansing operation. For this purpose, there is in the present instance provided a steam inlet pipe 34 having jetting orifices 35, by which steam may be discharged if desired, directly against the receptacle.

Preferably a housing 36 is provided to inclose the receptacles while they are subjected to the action of the cleansing media, and shown as mounted upon the tank or vat 2, and having end openings 37 and 38 for the entrance and discharge of the receptacles. Preferably near the discharge end thereof the housing is provided with a steam hood 39, having an outlet 40, whereby if desired, the steam may be discharged into the outer air through a window or the like, in the building wherein the apparatus is located.

In the operation of the apparatus shown in Figs. 1 to 5, inclusive, the cans are placed upon the chains 10 and 11 at the left hand end of the apparatus viewing Figs. 1 to 3 inclusive, such chains if a plurality thereof be employed, being relatively positioned to support the cans traveling thereon, mouth downward, it being unnecessary in this type of the invention, to provide means for locking or securing said cans to or upon the chains or conveyer.

Milk is usually received at dairies in cans and there bottled for distribution to customers. In emptying the cans during the bottling operation usually a small amount of milk is left in each can, through neglect or haste of the operative, and this aggregates a considerable amount in the course of a day. I contemplate saving such milk and, may provide any suitable device as a trough 41, of suitable length located beneath the receiving end of the upper run of the chains 9 and 10, and terminating in a contracted end or pipe 42 which discharges into a can or other receptacle, 43, the milk dripping from the cans.

If desired, lateral guiding rails, 44 and 45, may be disposed on the receiving end of the upper run of the chains 10 and 11, the rail 44 being shown as extended beyond the opposing rail to permit the ready positioning of the cans against the latter, which may have a hinged portion 46, that may be turned back when the cans of a larger size are employed, to afford sufficient space therefor. If desired, guiding rails 47 and 48 may be provided at the discharge end of the apparatus.

It is apparent that the endless conveyer herein typified by chains 10 and 11 need not extend beyond the ends of the vat or tank 2.

Milk cans that have been used to ship sweet milk need not be subjected to the cleansing action of an alkali bath, and, therefore, in washing said cans, the pump connected with the pipe 20 may be thrown out of operation, the cans being subjected to the cleansing action of cold water from the pipe 21 and the extensions thereof located over the receptacle 3, the water after its discharge from said pipe flowing into said receptacle and thence to the respective pump to be again forced thereby against succeeding cans.

It is apparent that each of the inlet pipes 20, 21 and 22 may be provided with extensions for the discharge of the cleansing medium into the interior of the can or other receptacle, and also upon the outer surface, if desired, or that one surface only of the can may be cleansed thereby.

While the jet orifices in the longitudinal extensions 23, 24 and 25 may be spaced as desired, preferably they are so spaced that each can in substantially any position over each of said pipes, may receive therein the direct discharge of the cleansing medium, it thus being unnecessary to center the can or receptacle in order that it may receive therein the said discharge. Similarly, the upstanding pipes 29 and 32 may be s[illegible] preferably are so spaced that the cleansing

fluid discharged therefrom is always directed against some portion of the exterior of the can or receptacle as the same passes thereby. Thus the can or receptacle in its travel is subjected to the action of the cleansing fluid at the forward or leading portion of its outer surface, and successively all parts thereof are similarly acted upon. It is apparent that should the cans or receptacles be in such condition as to render necessary an unusual amount of washing the endless conveyer or chains 10 and 11 may temporarily be stopped or the speed thereof slowed down.

Cans containing sweet milk are preferably first subjected to the cleansing action of cold water, then to the action of hot water, and finally to the sterilizing action of steam or the like. In the case of cans that contain milk that has become sour and in the case of certain other receptacles, it becomes desirable to subject them to the action of an alkali or other suitable bath, and for that purpose I may employ the pipe 20, so that such cans or receptacles are successively subjected to the treatment of an alkali bath, cold or hot water, as desired, then a further application of hot water and then steam, and are finally discharged through the apparatus in a thoroughly cleansed and sterilized condition.

Inasmuch as it is necessary merely to place the receptacles upon the endless conveyer in no stated position thereon, but merely preferably closely against the preceding receptacle, it is possible to operate the apparatus at a high rate of speed yet thoroughly to cleanse the receptacles subjected to the action thereof.

Referring to Figs. 6, 7 and 8, I have therein indicated modified forms of receptacle carriers. In Figs. 6 and 7 is shown a board or support 49, adapted to rest preferably by its weight along and longitudinally upon the endless conveyer, and provided with means for positioning thereon the receptacles to be cleansed. In the present instance I have represented the same as provided with openings or sockets 50, wherein the necks of the cans may be received as indicated in Fig. 7. Said board or support may be provided with handles 51, as at opposite ends thereof, so that when the board arrives at the discharge end of the upper run of the endless conveyer, it may be grasped by the operative and the cans thus removed *en masse*.

In Fig. 7ª I have shown a form of open rack 54 wherein preferably a plurality of cans 55 may be positioned, such rack comprising suitable longitudinal and transverse bars or members united into preferably a rectangular receptacle wherein the cans or other receptacles may rest, being supported therein, if desired by their neck portions as indicated. The open form of rack permits the application of the cleansing medium to the surface of the cans. The said longitudinal bars are represented at 56 and are connected by vertical bars 57.

In Fig. 8 is typified a form of endless conveyer wherein a can or receptacle receiving socket 52 is provided, herein shown as consisting of a horizontally disposed can encircling member and preferably downwardly extending spring members 53, to contact with the lower portion of a receptacle placed therein, as, for example, the neck of a milk can.

In each form of apparatus herein disclosed in accordance with the present type of the invention, it is apparent that the cleansing action and particularly of each cleansing medium, is or may be continuous, in that it is unnecessary to bring the can or receptacle or cover into a predetermined position before the same may be cleansed, but that after entering the range of the first jet until the receptacle passes beyond the range of that cleansing medium, it is continuously subjected to the cleansing action thereof. It is of course apparent that the pipes for the next cleansing medium may be so arranged relatively to those of the first as that the can or receptacle passes without intermission from the action of the first medium to that of the second, and so on, so that the cleansing operation is in all respects continuous.

It will be apparent that a circulating system need not be employed but that the water or other cleansing fluid may be allowed to run to waste if desired. The vat, if employed, may be located at any desired point in operative relation to the cans or receptacles.

Having thus described the invention, I desire it to be understood that although specific descriptive terms are employed, they are used in a generic sense and not for purposes of limitation and that the scope of the invention is set forth in the following claims.

Claims.

1. A receptacle washing apparatus comprising a vat, a circulating system connected thereto and having a substantially horizontally and longitudinally disposed pipe having upwardly directed discharge openings and opposed upright pipes having facing lateral discharge openings, an endless carrier having a substantially horizontal run thereof disposed above said vat over said first mentioned pipe and between said upright pipes and adapted to receive thereon receptacles to be cleansed, and an adjustable lateral guide for receptacles so positioned upon said carrier.

2. A receptacle washing apparatus comprising a vat, an endless carrier having an operative run supported above the same and adapted to receive receptacles supported mouth downward thereon, cleansing medium pipes within said vat and directed toward the interior of said receptacles, and means located anterior to said cleansing pipes to receive ma-

terial discharged from said receptacles, said material being received by said means uncontaminated by said cleansing medium.

3. A receptacle washing apparatus comprising a vat, an endless carrier having operative run supported above the same and adapted to receive receptacles supported mouth downward thereon, cleansing medium pipes within said vat and directed toward the interior and the exterior of said receptacles, and means located anterior to said cleansing pipes to receive material discharged from said receptacles, said material being received by said means uncontaminated by said cleansing medium.

4. A receptacle washing apparatus comprising a vat having compartments therein, a cleansing fluid circulating system connected to each compartment and terminating in discharge pipes upwardly directed, an endless carrier comprising laterally spaced portions whereon receptacles may be positioned mouth downward and spanning the same, and a trough beneath the upper run of said endless carrier anterior to said discharge pipes to receive material draining from said receptacles.

5. A receptacle washing apparatus comprising a vat having a plurality of compartments, means permitting the heating of one or more of said compartments, a circulating system connected to each compartment, each system terminating in discharge pipes arranged longitudinally of said compartments and having upwardly directed openings to discharge a cleansing medium into the mouth of the receptacles, and one or more of said systems having upright pipes provided with lateral openings to discharge a cleansing medium against the sides of the receptacles and an endless carrier having an operative run positioned above said discharge pipes and adapted to receive receptacles positioned thereon mouth downward.

6. A receptacle washing apparatus comprising a vat having a plurality of compartments, a circulating system connected to each compartment, each system terminating in discharge pipes arranged longitudinally of said compartments and having upwardly directed openings to discharge a cleansing medium into the mouth of the receptacles, and one or more of said systems having upright pipes provided with lateral openings to discharge a cleansing medium against the sides of the receptacles and an endless carrier having an operative run positioned above said discharge pipes and adapted to receive receptacles positioned thereon mouth downward whereby the interior of said receptacles may be cleansed from said upwardly directed openings and the exterior from said lateral discharge openings.

7. A receptacle washing apparatus comprising a vat, a circulating system connected thereto and having a pipe having upwardly directed discharge openings and opposed upright pipes having facing lateral discharge openings, and an endless carrier having a substantially horizontal run thereof disposed above said vat over said first mentioned pipe and between said upright pipes and adapted to receive thereon receptacles to be cleansed, whereby the interior of said receptacles may be cleansed from said upwardly directed openings and the exterior from said lateral discharge openings.

8. A receptacle washing apparatus comprising a vat having a circulating system including a pump, a substantially horizontal discharge pipe having upwardly directed openings and upright opposed discharge pipes having lateral facing discharge openings, and an endless carrier comprising a plurality of laterally spaced members upon which receptacles to be cleansed may be supported to span the same, and means to operate said carrier.

9. A receptacle washing apparatus comprising a vat having a circulating system including a pump, a horizontal discharge pipe having upwardly directed openings and upright opposed discharge pipes having lateral facing discharge openings, an endless carrier comprising a plurality of laterally spaced members upon which receptacles to be cleansed may be supported to span the same, means to operate said carrier, and a trough anterior to said discharge pipes to receive material draining from said receptacles said material being received by said means uncontaminated by the cleansing medium.

10. A receptacle washing apparatus comprising a vat having a plurality of compartments, a circulating system connected to each vat, means to heat the contents of one or more of said vats, discharge pipes connected to said systems having upwardly directed discharge openings, opposed upright discharge pipes having lateral facing discharge openings, an endless carrier comprising laterally spaced members adapted to receive thereon receptacles to be cleansed, said endless carrier having an upper horizontal run projecting beyond said vat at the intake end thereof, and a receptacle beneath said projecting portion of said run of said carrier to receive material draining from receptacles positioned thereon.

11. A receptacle washing apparatus comprising a vat having a plurality of compartments, a circulating system connected to each vat, means to heat the contents of one or more of said vats, discharge pipes connected to said systems having upwardly directed discharge openings, opposed right discharge pipes having lateral facing discharge openings, an endless carrier comprising laterally spaced members adapted to receive thereon receptacles to be cleansed, said endless carrier having an upper horizontal run projecting

beyond said vat at the intake end thereof, a receptacle beneath said projecting portion of said run of said carrier to receive material draining from receptacles positioned thereon, and a housing mounted upon said vat through which the receptacles are traversed upon said carrier.

12. A receptacle washing apparatus comprising a vat having a plurality of compartments, a circulating system connected to each vat, means to heat the contents of one or more of said vats, discharge pipes connected to said systems having upwardly directed discharge openings, opposed upright discharge pipes having lateral facing discharge openings, an endless carrier comprising laterally spaced members adapted to receive thereon receptacles to be cleansed, said endless carrier having an upper horizontal run projecting beyond said vat at the intake end thereof, a receptacle beneath said projecting portion of said run of said carrier to receive material draining from receptacles positioned thereon, a housing mounted upon said vat through which the receptacles are traversed upon said carrier, and lateral guides for the receptacles supported upon said projecting portion of said carrier.

13. A receptacle washing apparatus comprising a support, a carrier adapted to receive receptacles thereon, cleansing medium pipes having discharge orifices directed toward said receptacles positioned thereon, and means adapted to receive from the receptacles, when positioned upon the carrier and in a condition uncontaminated by the cleansing medium, the material contained in said receptacles when in use, and discharged therefrom when said receptacles are positioned upon said carrier.

In testimony whereof, I have signed my name to this specification, in the presence of two subscribing witnesses.

JAMES R. BLAIR.

Witnesses:
IRVING U. TOWNSEND,
ANNIE U. CHESLEY.

Plaintiff's Exhibit No 25.

620

(No Model.) 2 Sheets—Sheet 1.

L. VAN GILDER.

CAN WASHING MACHINE.

No. 546,205. Patented Sept. 10, 1895.

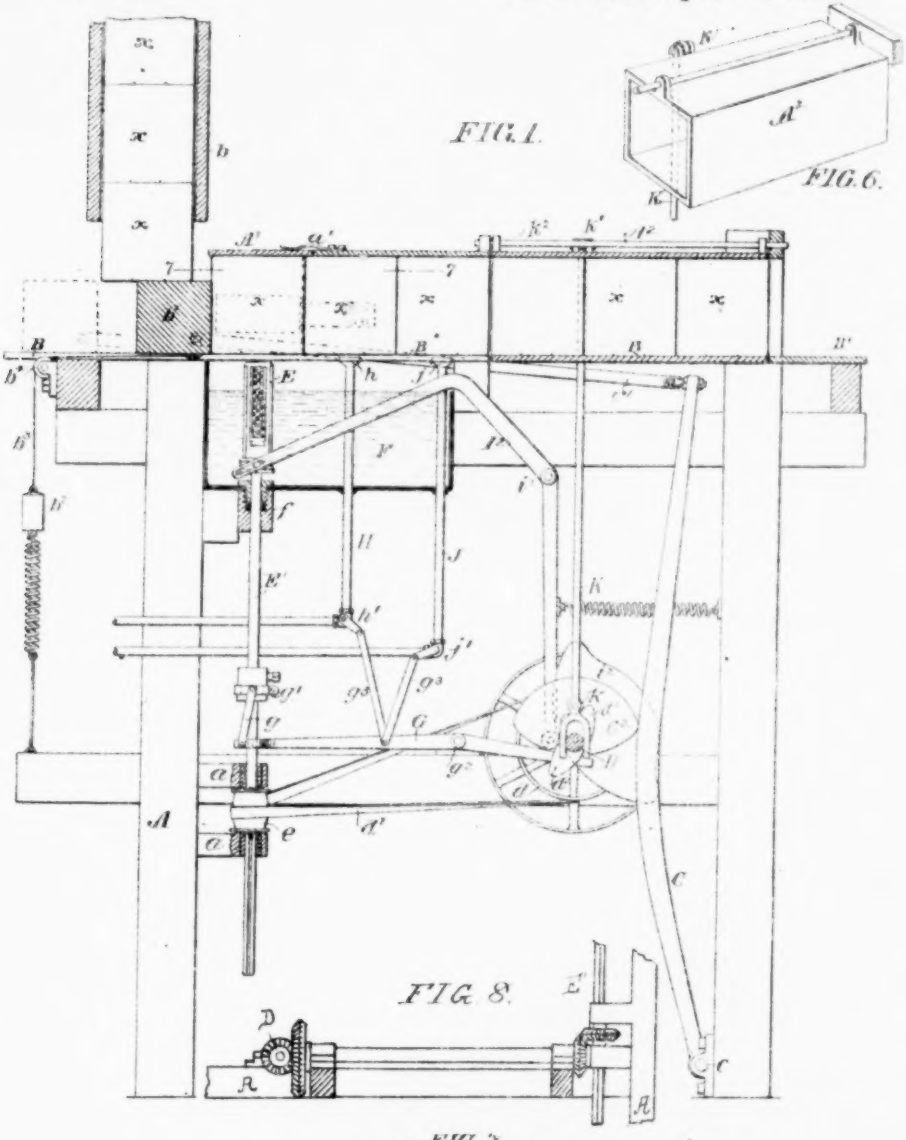


FIG. 1.

FIG. 6.

FIG. 8.

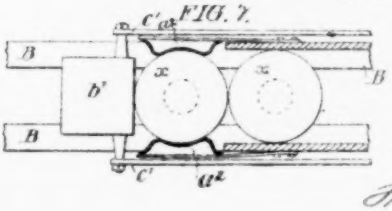


FIG. 7.

Witnesses:
F. D. Goodwin
Will A. Barr

Inventor:
Lincoln Van Gilder
by his Attorneys
Howson & Howson

(No Model.) 2 Sheets—Sheet 2.

L. VAN GILDER.

CAN WASHING MACHINE.

No. 546,205. Patented Sept. 10, 1895.

FIG. 2.

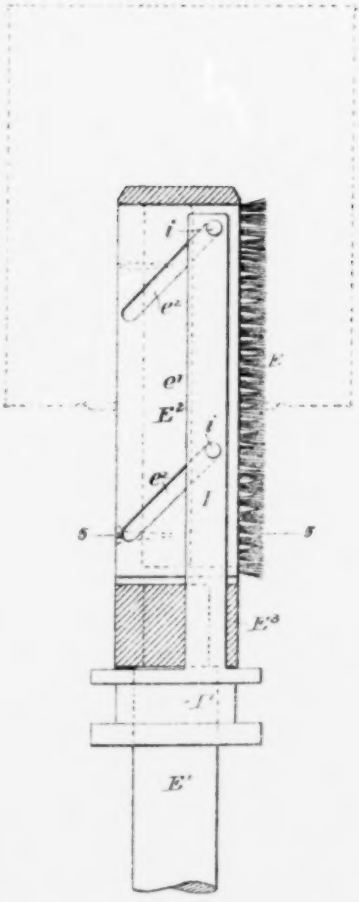


FIG. 3.

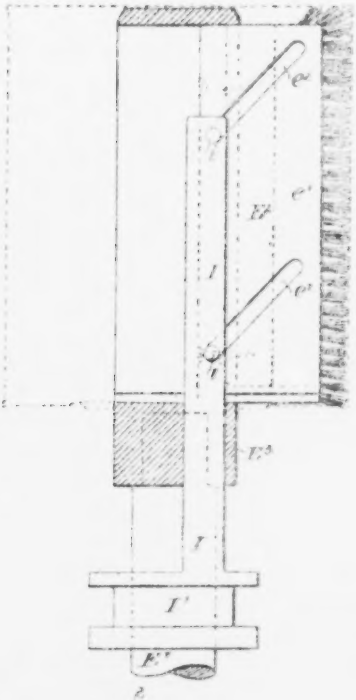


FIG. 4.

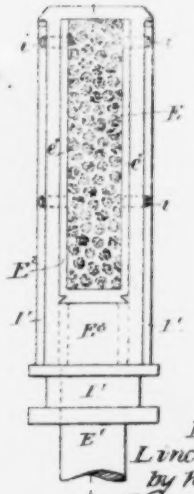
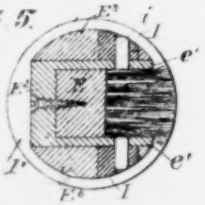


FIG. 5.



Witnesses:
L. D. Goodwin
Wilb. A. Barr

Inventor:
Lincoln Van Gilder
by his Attorneys
Howson & Howson

UNITED STATES PATENT OFFICE.

LINCOLN VAN GILDER, OF PHILADELPHIA, PENNSYLVANIA, ASSIGNOR TO HIMSELF AND JAMES B. ANDERSON, OF SAME PLACE, AND THOMPSON E. VAN GILDER AND VOLNEY VAN GILDER, OF OCEAN VIEW, NEW JERSEY.

CAN-WASHING MACHINE.

SPECIFICATION forming part of Letters Patent No. 546,205, dated September 10, 1895.

Application filed September 25, 1894. Serial No. 524,092. (No model.)

To all whom it may concern:

Be it known that I, LINCOLN VAN GILDER, a citizen of the United States, residing in Philadelphia, Pennsylvania, have invented certain Improvements in Can-Washing Machines, of which the following is a specification.

The object of my invention is to so construct a machine for washing cans used for preserving vegetables, fruits, &c., that the cans can be placed in a hopper in the machine and automatically carried forward, scoured, cleansed by water, and subjected to the action of steam. This object I attain in the manner fully described hereinafter.

In the accompanying drawings, Figure 1 is a sectional elevation of my improved can-washing machine. Fig. 2 is a sectional view on the line 2 2, Fig. 4, showing the brush partly inserted in the can. Fig. 3 is a sectional view on the same line as Fig. 2, showing the brush extended within the can. Fig. 4 is a face view of the brush. Fig. 5 is a section on the line 5 5, Fig. 2. Fig. 6 is a detached perspective view of the shaking-box, and Fig. 7 is a section on the line 7 7, Fig. 1. Fig. 8 is a modification of part of the driving-gear.

A is the frame of the machine, on which is mounted the platform B, and over which the cans x travel. Mounted above the table is a chute b, in which the cans are placed one on top of another, with their open ends downward. The cans are fed automatically to the platform from the chute by a slide b', which is connected to an arm C, pivoted at c to the frame of the machine. This arm is connected to the slide b' by rods c'. The arm C is moved by a cam c^2 on a driven shaft D, so that as the machine is operated the slide will reciprocate on the platform, carrying with it a can from under the chute to a point directly above the brush. The slide b' is returned to its normal position by a weight and spring b^2, connected to the slide by a cord b^3 passing over a pulley b^4 on the frame of the machine.

E is the brush which in its normal position rests below the platform B, and preferably within a tank F of water. The platform is cut away, so as to allow the brush to pass up into the opening of the can, as clearly illustrated in Fig. 2. The brush E is mounted on a vertical shaft E', adapted to a stuffing-box f and to bearings $a\ a$ on the frame of the machine. Splined on this shaft is a belt-pulley e, driven by a belt d', passing from a belt-wheel d on the shaft D. A shaft and bevel-gear may be substituted for the belt, as shown on Fig. 8.

In order to elevate the brush at the proper time, I connect the shaft E' with a lever G by links g, which are secured to a ring g' coupled to the shaft. By this arrangement the shaft can revolve without interfering with the movement of the lever G. This lever G is pivoted at g^2 to the frame of the machine and is actuated by a cam c^3, so that when the can is moved to a position directly above the brush the brush will be forced into the can.

In order to expand the brush after it is in the can, as shown in Fig. 3, I construct it as follows: The brush E is mounted in a box E^2, having side plates e' in which are grooves e^2, arranged at an incline, as shown in Fig. 2, and adapted to these grooves are pins $i\ i$, projecting from sliding bars I, one on each side of the brush. These bars are united by a collar I', adapted to the shaft E', and are mounted in ways in the head E^3, so that they can move vertically, and the brush-box E^2 is mounted in the head so that it can move only laterally. Thus, when the sleeve I' is raised, the brush will be drawn into the position shown in Fig. 2, owing to the fact that the slides are confined laterally and the brush-box confined vertically, and the slots in the brush-box so inclined that the pins must necessarily draw the brush in.

The slides I are raised by a lever I^2, pivoted at i' to the frame of the machine, one arm of the lever engaging with a ring on the collar I' and the other arm being actuated by a cam i^3 on the cam-shaft D.

H is a water-spray pipe having a nozzle h over which the can passes after it has been moved from a position above the brush, so that the water under pressure will rinse the can after the brush has removed the particles adhering to it.

J is a steam-pipe having a nozzle *j*, so arranged that after the can passes from above the water-spray nozzle it will be subjected to the action of steam.

h' and *j'* are valves in the pipes H and J, respectively, and the arms of these valves are connected to the lever G by links g^3, so that when the brush is elevated both valves are opened and closed as soon as the brush is lowered.

In the event of the can not registering properly above the brush, I provide a hinged abutment A', having a spring *a'*, which will be raised should the brush strike a can, thus preventing breaking of the operating parts.

On each side of the platform B is a spring side clamp a^3, for centering the can and preventing it from turning with the brush.

A^2 is a shaking-box, which is operated by a cam d^2 on the cam-shaft D, which acts on the roller *k*, carried by a rod K, coupled to the box A^2 at *k'*. The box is suspended from a bar k^2, mounted on the frame. Should any water accumulate in a can it will be shaken out by the action of the box.

The operation of the machine is as follows: The cans are fed to the chute *b* with their open ends downward, and as the machine is operated the slide *b'* removes the under can from the chute and places it directly above the brush, which is projected into the can and forced out so that its bristles will come in contact with the side of the can, and as the brush revolves it will remove any foreign matter from the interior of the can. The brush is then retracted and returned to the tank clear of the can, which is then fed forward to a point in line with the water-nozzle, another can being placed in position above the brush, and as the operation proceeds the first can is pushed forward to a point above the steam-spray pipe, and as the cans continue to move forward they enter the shaking-box A^2, and from this box they are pushed onto the platform B' clear of the machine.

It will be understood that while my improved machine is especially adapted for cleaning cans used in canning or preserving vegetables, fruits, &c., it can be used for cleaning other cans or receptacles as well.

I claim as my invention—

1. The combination in a machine for washing cans, of the feeding mechanism for the can, brush, mechanism for inserting the brush into the can, mechanism for projecting the brush when within the same and mechanism for revolving the brush, substantially as described.

2. The combination in a machine for washing cans, of the feeding mechanism for the cans, the brush, mechanism for revolving the same, and mechanism for elevating and mechanism for laterally projecting the brush, when within the can, and a spray pipe adapted to spray water into the can after it has been operated upon by the brush, substantially as set forth.

3. The combination in a can washing machine, of the mechanism for feeding the cans, a revolving brush, mechanism for elevating the brush, and mechanism for laterally projecting the brush when within the can, a spray water pipe and a steam spray pipe, by which water and steam are sprayed into the can after it is cleaned by the brush, substantially as set forth.

4. The combination in a can washing machine, of the platform on which the cans are mounted, a slide, mechanism for operating said slide to feed the cans forward, a tank, a brush mounted within the tank, a vertical shaft on which the brush is secured, mechanism for revolving said shaft, and mechanism for elevating the shaft and brush, so as to project the brush into the can, vertically operated slides, acting to project the brush laterally, and mechanism for operating the said slides, with steam and water pipes, valves therefor, actuated by the mechanism that elevates the shaft, substantially as described.

5. The combination in a can washing machine of a brush head, a brush box mounted in said head, said brush box having inclined slots, vertical slides having pins adapted to the slots, mechanism for elevating the slides so as to retract the brush box, and mechanism for raising and mechanism for revolving the brush head, substantially as described.

6. The combination in a can washing machine, of the platform for the cans, the brush, mechanism for revolving the brush, mechanism for elevating the same and mechanism for laterally projecting the brush, with a shaker mounted beyond the brush and adapted to receive the cans and means for operating the shaker, substantially as described.

7. The combination in a can washing machine, of a platform, a brush, the shaft E' on which the brush is mounted, cam shaft D, means for revolving the shaft E', the pivoted lever G, connected to the shaft E', a cam c^2 on the shaft D, slides I acting to project the brush laterally, a lever I^2 connected to the slide, and a cam i^2 on the shaft D acting upon the lever, substantially as described.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

LINCOLN VAN GILDER.

Witnesses:
HENRY HOWSON,
JOSEPH H. KLEIN.

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No. 781,692. PATENTED FEB. 7, 1905.

W. F. STUBBS.

CAN WASHING APPARATUS.

APPLICATION FILED AUG. 30, 1904.

Fig. 1.

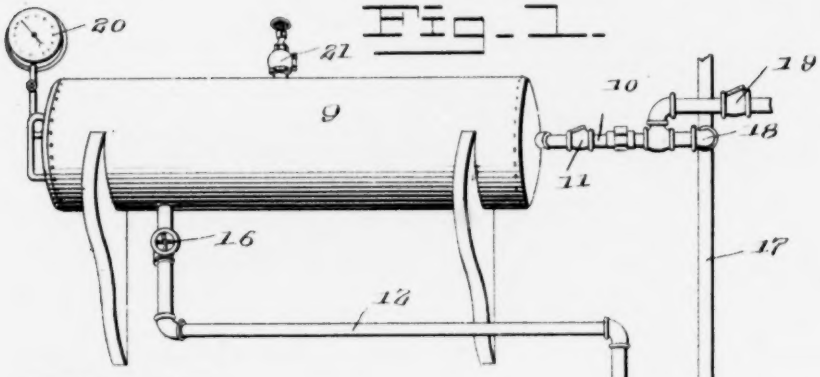
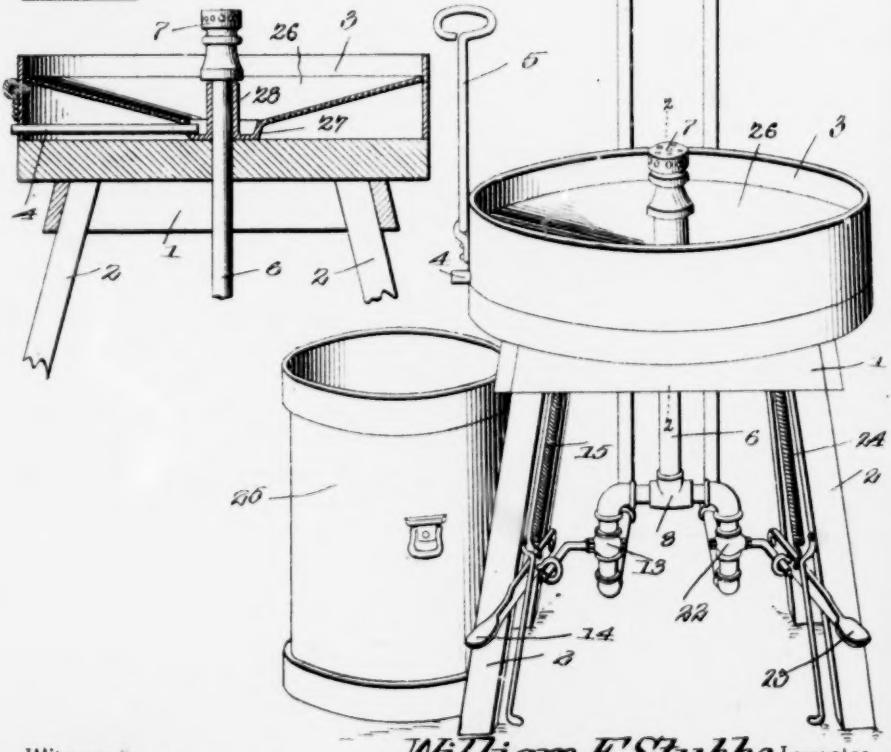


Fig. 2.



Witnesses

E. F. Hemperl

H. A. Shepard

William F. Stubbs, Inventor.

by C. A. Snow & Co.

Attorneys

No. 781,692. Patented February 7, 1905.

UNITED STATES PATENT OFFICE.

WILLIAM F. STUBBS, OF WINFIELD, KANSAS.

CAN-WASHING APPARATUS.

SPECIFICATION forming part of Letters Patent No. 781,692, dated February 7, 1905.

Application filed August 30, 1904. Serial No. 222,733.

To all whom it may concern:

Be it known that I, WILLIAM F. STUBBS, a citizen of the United States, residing at Winfield, in the county of Cowley and State of Kansas, have invented a new and useful Can-Washing Apparatus, of which the following is a specification.

This invention relates to washing apparatus, and has for its object to provide for simply and effectually washing and sterilizing milk-cans and other receptacles and in this connection to effect a saving of the accumulation of cream and milk which are ordinarily lost with the wash-water in the usual manner of washing milk-cans.

It is furthermore designed to embody the invention in a compact and readily-manipulated apparatus wherein the cans to be cleansed may be conveniently subjected to the action of the wash-water, so as to initially rinse the accumulation of cream therefrom into a receptacle, from which the cream may be subsequently recovered by a centrifugal cream-separator, and then to complete the cleansing and sterilizing of the can.

With these and other objects in view the present invention consists in the combination and arrangement of parts, as will be hereinafter more fully described, shown in the accompanying drawings, and particularly pointed out in the appended claims, it being understood that changes in the form, proportion, size, and minor details may be made within the scope of the claims without departing from the spirit of sacrificing any of the advantages of the invention.

In the accompanying drawings, Figure 1 is a perspective view of a can-washing apparatus constructed in accordance with the present invention. Fig. 2 is a detail sectional view on the line 2 2 of Fig. 1.

Like characters of reference designate corresponding parts in each figure of the drawings.

In carrying out the present invention there is provided a table or stand consisting of a stationary top 1, supported upon suitable legs 2. Upon the top of this table is a circular pan 3, mounted to rotate and provided at one side with a discharge-spout 4 and also having a suitable handle 5 for convenience in manually rotating the pan. An upright pipe 6 centrally pierces the top of the table or stand and also passes through the bottom of the pan 3, so as to form a journal therefor, and upon the upper end of this pipe is a spray-nozzle 7, rising a suitable distance above the top edge of the pan. At the lower end of the pipe 6 is a T-coupling 8, designed for connection with a water-supply and a steam-supply.

Water is supplied to the nozzle 7 from an elevated tank 9, to which water is fed by a pipe 10, which includes a check-valve 11, adjacent the tank. A pipe 12 leads from the bottom of the tank 9 to one end of the T-coupling 8 and includes a controlling-valve 13, located beneath the top of the table or stand. This valve is controlled by means of a foot-lever 14, terminally fulcrumed upon one of the legs of the table or stand and normally held in an elevated position by a spring 15, connected to the lever and the top of the stand, whereby after the lever has been depressed to open the valve and the foot of the operator is removed from the lever the latter will be automatically returned to its normal position under the influence of the spring 15, so as to close the valve and shut off the supply of water. A suitable cut-off valve 16 is provided near the upper end of the pipe 12, so as to close the latter when it is desired to uncouple the stand portion of the apparatus from the water-tank.

To heat the water within the tank 9, there is a steam-pipe 17, connected with a suitable source of steam (not shown) and also connected to the other end of the T-coupling 8, said steam-pipe 17 having an elbow 18 communicating with the pipe 10, so as to supply steam to the water-tank, and thereby heat the water in the tank and also maintain a pressure thereon. The water-pipe 10 is provided with a check-valve 19 in rear of the point of connection between the steam-pipe 17 and the combined steam and water pipe 10. A suitable gage 20 is connected to the water-tank, and a blow-off valve 21 is also provided in the top of the tank.

Adjacent the point of connection between the pipe 17 and the coupling 8 of the pipe 6

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there is a controlling-valve 22, which is connected to a foot-lever 23, fulcrumed upon the stand, with a spring 24 connected to the top of the stand and the lever for yieldably maintaining the latter in an elevated position with the valve 22 closed.

In using the present apparatus the can to be cleansed is inverted and placed mouth downward within the pan 3, and then the lever 14 is manipulated to open the valve 13 and admit water under pressure from the tank 9 to the nozzle 7, which sprays water against the inner walls of the can, thereby removing accumulations of milk and cream, which run out with the rinse-water through the spout 4 into a suitable receptacle 25. After the can has been rinsed sufficiently to remove the accumulations of milk and cream the pan is rotated, by means of the handle 5, so as to withdraw the spout 4 from the receptacle, as it is not desirable to discharge more water than is absolutely necessary into the receptacle 25. This initial step in the operation is very important by reason of the fact that the accumulations of milk and cream which are ordinarily lost with the wash-water are collected in the receptacle 25 and may be eventually recovered by submitting the wash-water to the action of a centrifugal machine. After the initial rinsing has been completed the water is permitted to spray into the can until it has been thoroughly cleansed, after which the operator removes his foot from the lever 14, so as to permit of the valve 13 being closed by the action of the spring 15, and then the foot-lever 23 is depressed to open the valve 22 and supply steam to the nozzle 7, thereby to effectually sterilize the can and complete the cleansing operation. It will here be explained that the water in the tank 9 is under steam-pressure, and therefore escapes through the nozzle 7 with considerable force, so as to effectually wash the accumulations of milk and cream from the interior of the can, and at the same time the water is maintained in a heated condition by the steam.

A very important feature of the present apparatus resides in the arrangement of the foot-levers 14 and 23, which may be conveniently manipulated without requiring the operator to shift his position, and the hands of the operator are free for rotatably shifting the pan 3 after the initial rinsing step. If desired, the pan may be manually rotated during the cleansing operation without interfering with any of the parts of the apparatus.

When the pan 3 has been shifted to withdraw the spout 4 from the receptacle 25, there should be a trough or the like (not shown) arranged to receive the discharge from the spout and carry the same off to a sewer, or any preferred manner of conducting the wash-water away from the apparatus may be employed.

It is preferred to have the pan 3 consist of an upstanding annular rim and a dished or inverted conical bottom 26, terminating at its lowermost and central point in a depression or socket 27, substantially flush with the bottom of the rim, so as to rest upon the top of the table, thereby to lead the wash-water to the depression or socket 27, from which it is carried off by the spout 41, piercing the socket and the rim of the pan. A suitable sleeve 28 rises from the bottom of the pan and embraces the pipe 6, so as to form an extended bearing for the pan.

Having fully described the invention, what is claimed is—

1. A washing apparatus comprising a pan having an open top and an outlet-spout, and a spray-nozzle within the pan at the axis thereof, the pan being shiftable to withdraw the outlet-spout from its initial position.

2. A washing apparatus comprising a rotatable pan having an outlet-spout projected at one side thereof, and a spray-nozzle at the axis of the pan.

3. A washing apparatus comprising a rotatable pan having an open top and an outlet-spout, a spray-nozzle within the pan at the axis thereof, and a handle to rotate the pan and thereby shift the outlet-spout from its initial position.

4. A washing apparatus comprising a stand, a spray-nozzle piercing the stand, a supply-pipe connected to the nozzle, and a rotatable pan supported upon the stand and mounted upon the nozzle as an axis, said pan being provided with a laterally-directed discharge-spout.

5. In an apparatus of the class described, the combination with a stand, of a pan supported thereby, a nozzle in the pan, a pipe piercing the bottom of the stand and connected to the nozzle, water and steam pipes connected to the first-mentioned pipe, and controlling-valves for the water and steam pipes.

6. In an apparatus of the class described, the combination with a stand, of a pan supported thereon, a nozzle within the pan, a service-pipe piercing the bottom of the stand and connected to the nozzle, a water-pipe and a steam-pipe connected to the service-pipe, controlling-valves included in the water and steam pipes, foot-levers fulcrumed upon the stand and connected to the respective valves, and springs connected to the levers to yieldably maintain the valves closed.

In testimony that I claim the foregoing as my own I have hereto affixed my signature in the presence of two witnesses.

WILLIAM F. STUBBS.

Witnesses:
G. B. CRICHTON,
DELMER SPANGLER.

No. 864,133. PATENTED AUG. 20, 1907.

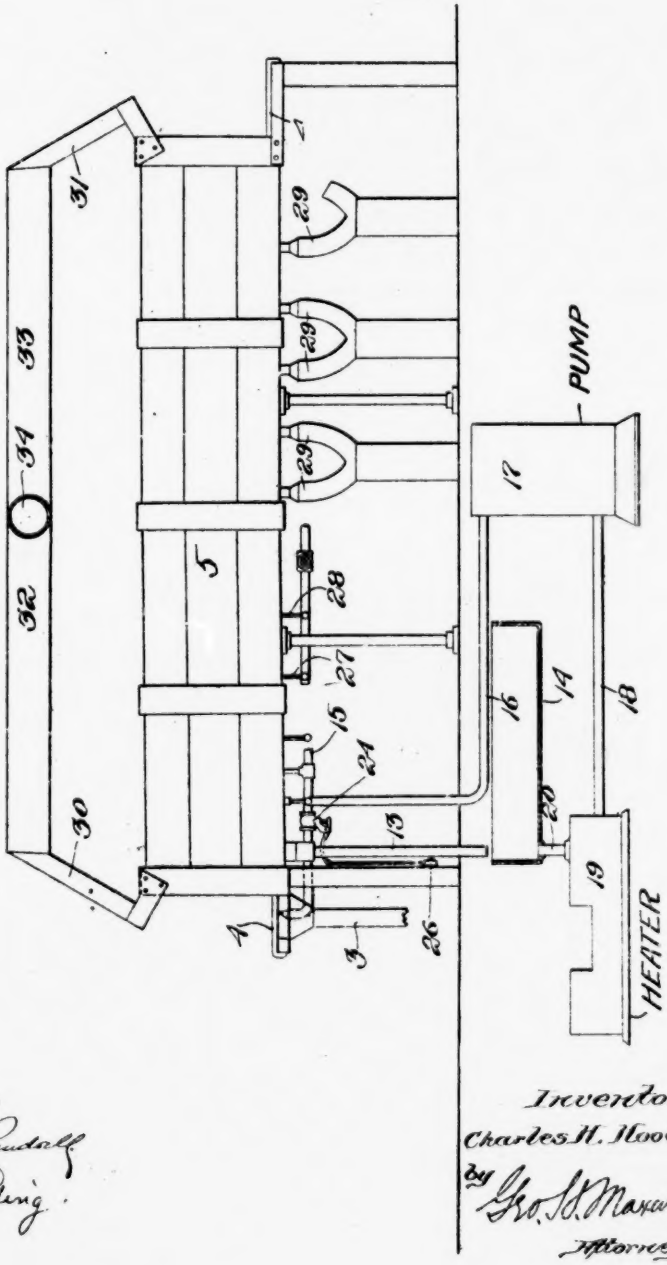
C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED OCT. 24, 1906.

4 SHEETS—SHEET 1

Fig. 1.



Witnesses:
Arthur C. Randall
M. J. Spalding.

Inventor:
Charles H. Hood,
by Geo. L. Marshall
Attorney

No. 864,133. PATENTED AUG. 20, 1907.

C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED OCT. 24, 1906.

4 SHEETS—SHEET 2.

Fig. 2.

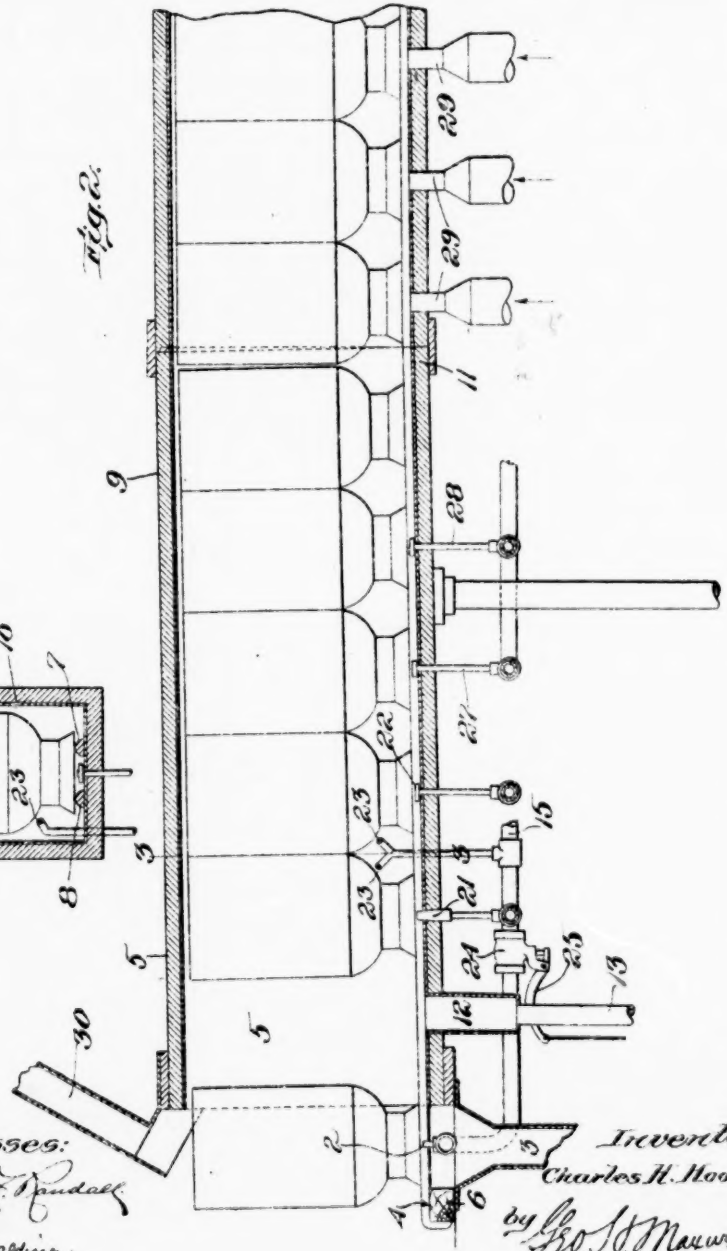
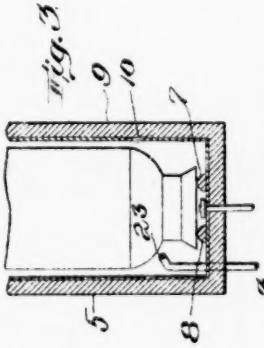


Fig. 3.



Witnesses:
Arthur C. Randall
M. J. Spalding.

Inventor:
Charles H. Hood,
by Geo. S. & Maxwell
Attorney.

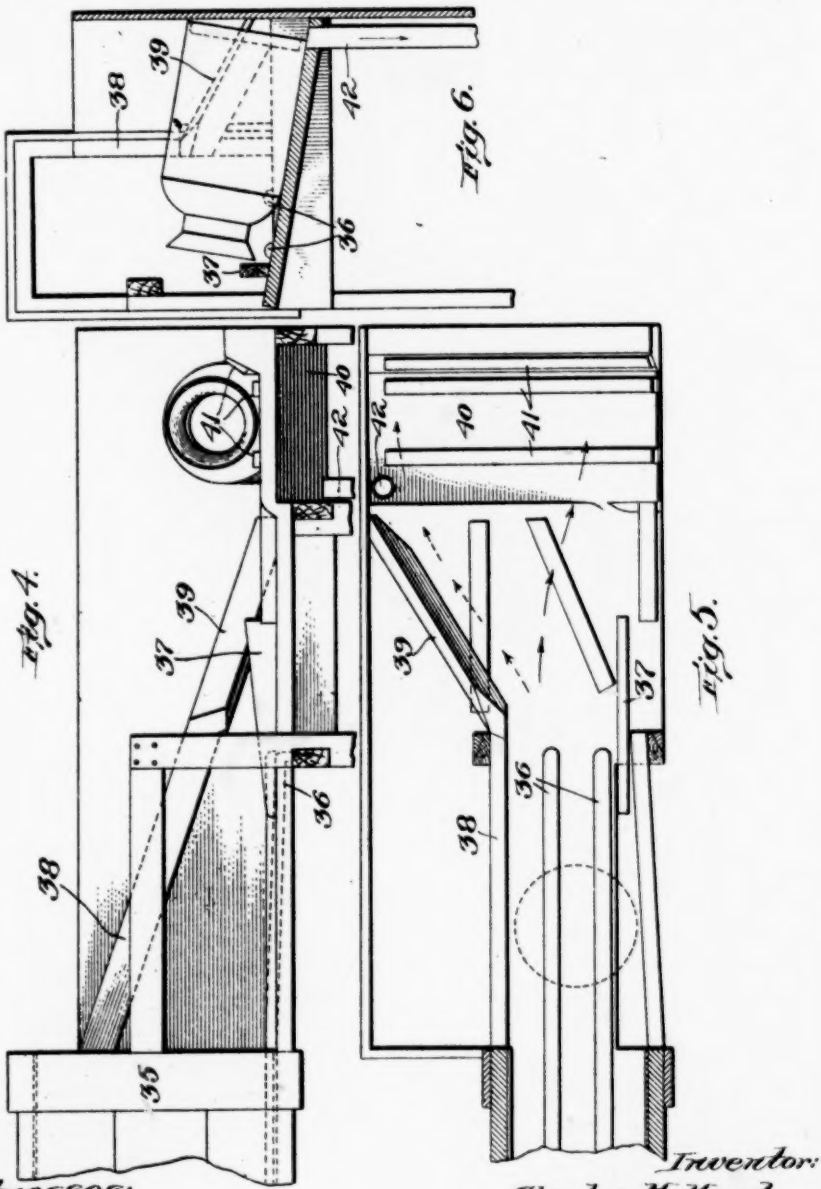
No. 864,133. PATENTED AUG. 20, 1907.

C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED OCT. 24, 1906.

4 SHEETS—SHEET 3.



Witnesses:
Arthur C. Randall
M. J. Spalding

Inventor:
Charles H. Hood,
by Geo. S. Maxwell
Attorney.

6336

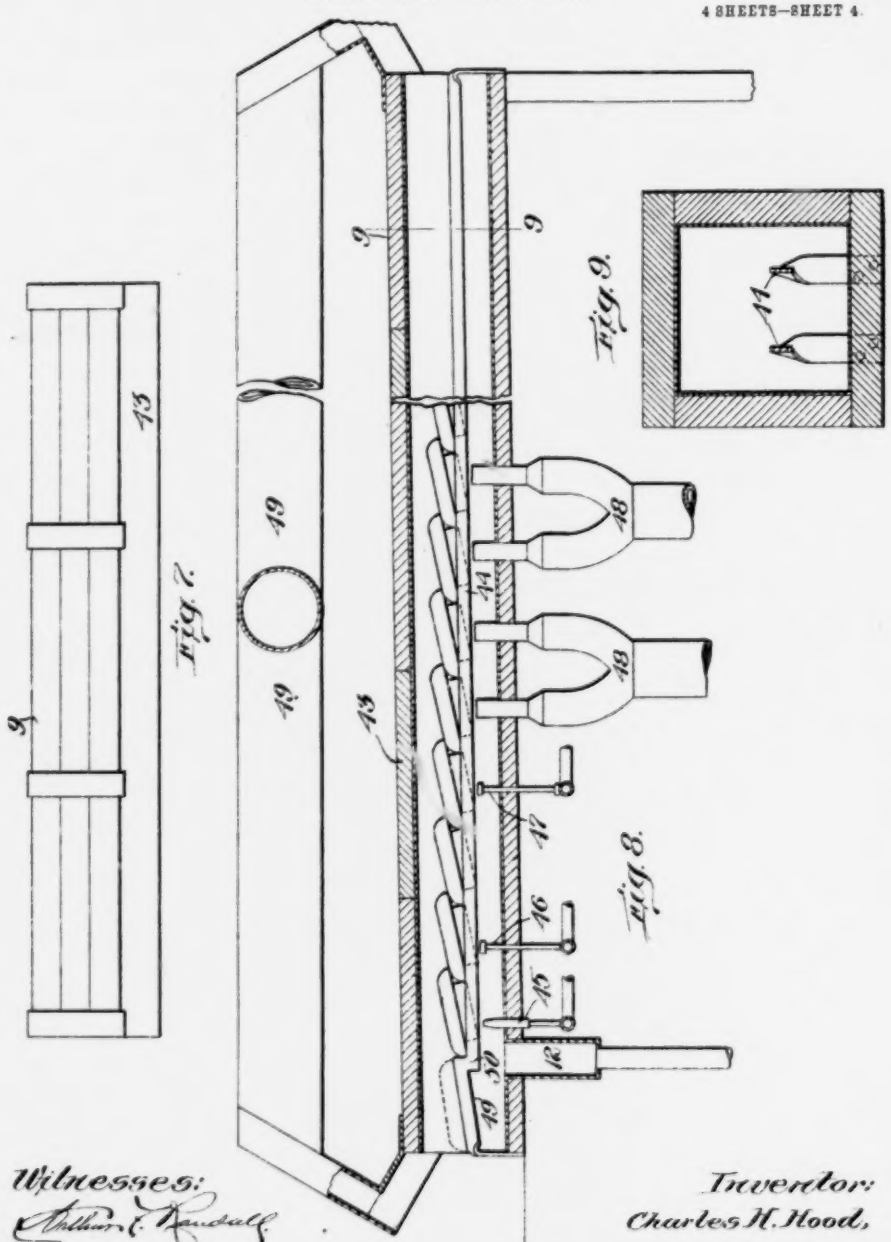
No. 864,133 PATENTED AUG. 20, 1907.

C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED OCT. 24, 1906.

4 SHEETS—SHEET 4.



Witnesses:
William E. Randall
M. J. Spalding

Inventor:
Charles H. Hood,
by Geo. S. Maxwell,
Attorney.

UNITED STATES PATENT OFFICE.

CHARLES H. HOOD, OF SOMERVILLE, MASSACHUSETTS.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK-CANS.

No. 864,133. Specification of Letters Patent. Patented Aug. 20, 1907.

Application filed October 24, 1906. Serial No. 340,336.

To all whom it may concern:

Be it known that I, CHARLES H. HOOD, a citizen of United States, residing at Somerville, in the county of Middlesex and State of Massachusetts, have invented an Improvement in Apparatus for Cleansing, Sterilizing, and Drying Large Milk-Cans, of which the following description, in connection with the accompanying drawings, is a specification, like letters on the drawings representing like parts.

In my copending applications Ser. No. 303,643 and Ser. No. 340,335, I have presented certain features of my invention for treating milk cans, in which I have set forth my discovery as to using air and water in extremely large volume, whereby the washing and drying of milk cans is simplified in an unexpected degree, the latter application containing features whereby the apparatus itself is shortened and simplified and the time and processes of treating the cans are reduced, and more accurate and uniform results produced.

The present case relates to apparatus for carrying out my invention for large cans as distinguished from the medium sized cans of my above-mentioned applications.

Certain features shown in my present application are set forth and claimed in my above mentioned application Ser. No. 303,643.

In the trade large milk cans of about five to fifteen gallons capacity are used for transporting milk in quantity from the dairy farm to the wholesaler in the city, and my present invention relates to this character of can. Such a can is very heavy and difficult to handle in washing, and is very difficult to get dry and to keep clean and to keep from rusting. Yet it must be cleansed, sterilized, and dried with as much certainty and thoroughness as the smaller cans or else the city supply will be contaminated with bacteria, etc., notwithstanding that the smaller cans are properly treated.

Preferably the cans are subjected to the various operations at different points, being placed on tracks to be pushed over rinsing, washing, cleansing, sterilizing and drying means in the order already explained in my above-mentioned application, my present apparatus however containing means whereby the large cans are maintained in proper position and treated with the large volumes of water, air, etc., to the best advantage, while the large cumbersome and awkward covers thereof are similarly treated and passed along in convenient relation to the cans, so that the operators can handle them both in conjunction and maintain the proper progress of the cans and their covers through the apparatus, the cans being automatically delivered and turned up for inspection at the end of the apparatus at the point where the covers are delivered ready to be placed on the cans again from which they were taken at the front end of the apparatus.

The constructional details of my invention, the manner of using the apparatus, and further advantages thereof, will be pointed out in the course of the following description, taken in connection with the drawings, in which I have shown a preferred embodiment of the invention.

In the drawings, Figure 1 is a side elevation of the apparatus, the cover-containing compartment being removed and the drip tank shown in section for convenience of illustration; Fig. 2 is an enlarged longitudinal sectional view of a portion of the apparatus shown in Fig. 1; Fig. 3 is a cross-sectional view taken on the dotted line 3—3, Fig. 2; Fig. 4 is an enlarged view in side elevation of the outgoing end of the apparatus; Fig. 5 is a top plan view thereof, partly in section; Fig. 6 is a transverse sectional view of the parts shown in Figs. 4 and 5 looking at the can of Fig. 4 toward the left; Fig. 7 is a plan view on a reduced scale of the apparatus showing the relation of all the parts to each other; Fig. 8 is an enlarged sectional view similar to Fig. 2, showing the arrangement for the covers; and Fig. 9 is a transverse sectional view on the line 9—9, Fig. 8.

For convenience of illustration I have simply shown my invention as arranged for transmitting one row or series of cans, inasmuch as these cans are so large and heavy that in usual plants it is found impracticable to provide compartments or passageways for more than one series. It is unnecessary to describe these cans, as they are commonly in use throughout the country, being made of heavy iron tinned or galvanized and provided with reinforcing bands and shoulders for enduring the rough usage to which they are subjected in transportation.

My object is to apply to the can a series of treatments, one after the other, and this is accomplished preferably by moving the can itself, although in the hereinafter contained claims I do not invariably restrict myself to having the spraying, etc., nozzles spaced apart and means provided for permitting the can to travel.

In the apparatus of the drawing, however, I provide on suitable supports 1, an inclosure or passageway, at the entrance of which is a rinsing nozzle 2 over a pipe 3 leading to the sewer. The track projects at 4 beyond a housing 5 for the passageway for the cans, said track being supported on a cross-timber or other means 6, so that the cans may be readily turned in inverted position on the projecting portion of the track. The track proper consists of opposite runways, herein shown as rounded rails 7, 8, secured to the bottom of the passageway so as to lift the heavy cans the proper distance from said bottom and reduce the friction of the moving cans thereon. The passageway is preferably constructed of planks or metal 9 and provided with a metal lining 10, or it may be entirely constructed of iron so as to withstand the heavy usage to which it is subjected when loaded with the large cans. The

track and bottom of the passageway are inclined from an intermediate point 11, tipping forward sufficiently to cause the drippings from the cans to flow to the front of the apparatus, most of the drippings being caught by a catch basin 12 and thence delivered by a pipe 13 into a drip tank 14.

I have succeeded in effecting perfect cleansing of the cans by applying a hugh volume of cleansing fluid or water to the interior of the cans. A supply pipe 15 is connected by a pipe 16 to a force pump or pressure apparatus 17 connected by a pipe 18 to a heater 19 which receives its supply from a pipe 20 from the bottom of the tank 14. The suds, soda solution, or other cleansing fluid is prepared in the tank 14 and is thence forced in great volume to the pipe 15, having a direct discharge at a nozzle 21, which delivers the fluid in a hugh volume to the interior of the can as the latter halts over said nozzle. A second nozzle 22 delivers rinsing water from the city supply or other convenient source to the interior of the next preceding can. The nozzle 22 is provided with a spraying device, so that it acts to cleanse the can. Nozzles 23 wash the outsides of the can. The pipe 15 is shown as provided with a valve 24 operated by a lever 25 and stirrup or other foot operated means 26, so that thereby the operator may give an intermittent flow at the nozzle 3. This permits the operator to shut off the water while placing the cans in position, and also enables him to prevent the flow of water at said nozzle whenever a can is not present. This also, taken in connection with the shape of the nozzle, enables him to control the water so that he may give an impinging blow by means of the water, against any particular part of the can where he observes any lodged matter needing special treatment. The cans having been treated by the nozzles 3, 21, 22, are moved forward and come over steam or boiling-water nozzles 27, 28, which spray a sufficient volume of steam into the cans at high pressure so that when the cans are subsequently dried they are thoroughly sterilized.

At the outgoing end of the apparatus I provide air pipes 29 for forcing air for drying, preferably hot air, into the cans in huge volumes, and as said air escapes from the cans and is driven through the passageway it is sucked up by a suction apparatus operating through pipes 30, 31 at the opposite ends of the passageway, connected by pipes 32, 33 to a central pipe 34. As the cans escape at the outgoing end 35 of the apparatus, they are automatically tipped over gently and inverted at the right angle for proper inspection, the inner rail of the track being lower at 36, as shown clearly in dotted lines in Fig. 4, and an upwardly inclined track extension or block 37 being provided just beyond this lowered track portion, so that as the can reaches this point it is gently tipped over backward against a rail 38 and as it reaches the upwardly inclined forward end of the track extension 37 it engages a deflected portion 39 of said rail, with the result that the can at once tips further back and rolls downwardly, said track 38, 39 being inclined for this purpose, as shown in Fig. 4, and lands in an inclined pocket 40 provided with suitable supports 41, which retain it in proper position and permit it to be readily pulled out lengthwise by the operator. The pocket 40 is provided with a drain pipe 42 to dispose of any liquid that may possibly reach the same from the main passageway or be dumped therein from the bottoms of the cans as they are turned over to inverted position. The cans, having been automatically turned up into the inclined position shown in the drawings, are quickly inspected.

At the right-hand side of the can passageway is a cover passageway 43, see Fig. 7, having a track 44, shown as made of stiff bar iron, see Fig. 9, and provided with a washing nozzle 45, cleansing or rinsing nozzle 46, sterilizing nozzle 47, drying pipes 48 and exhaust apparatus 49, substantially the same as already explained in connection with the can passageway. The cover passageway is so arranged that the operator as he takes up a dirty can, can place the can upon the adjacent track 4 and at the same time place the cover in the cover passageway, and when the operator at the opposite end of the apparatus inspects a sterilized and dried can, the outgoing end of the cover passageway is at his hand so that he can take therefrom a sterilized and dried cover and place it on the inspected can.

The covers of these large cans are heavy, and the overhanging top portions thereof are usually made double, so that the covers get battered and more or less out of shape, so that I have found it difficult to devise a suitable passageway for permitting them to be shoved through without pushing each other out of place and getting wedged, etc. I have found, however, that by overlapping the covers one on the other, as shown in Fig. 8, they move along smoothly on the two rails of the track, the rear edge of the flange of the cover hanging downwardly between the rails and serving to guide the cover to some extent while the overlapping of the top portion of one cover onto the rear side of the preceding cover helps still further to hold them in place. To accomplish this arrangement of the covers automatically I provide an inclined part 49 at the beginning of the track, connected by a jog 50 from the remaining straight portion of the track, so that thereby a following cover is caused to climb upwardly onto a preceding cover, and then when it reaches the jog 50 said following cover drops down into proper overlapped position for the remainder of its passage.

I do not herein claim the details of the cover cleaner and drier *per se*, the cover apparatus being contained in a separate divisional application.

In practice, the cans, notwithstanding their large size and heavy weight, can be handled rapidly, and cleansed, sterilized and dried thoroughly by my apparatus. First, the operator takes the cover from a can and places it in the cover passageway 43, and then inverts the can upon the projecting track 4 of the passageway 5. As soon as it is in position he depresses the foot lever 26, thereby opening the valve 24 and permitting a sharp blast of water to strike the inside surface of the can, instantly dislodging any matter which may have stuck against the can. The can is then as herein shown shoved forward over the constantly flowing stream of water, which pours in large volumes, from the jet 21, so that thereby the can is thoroughly and instantly washed with the soda solution or other washing fluid. It is then shoved along by the placing of succeeding cans in the passageway, and next halts over the spraying nozzle 22, where it, is thoroughly rinsed. From this position it proceeds, step by step, to the steam nozzles, where it is thoroughly steamed

d sterilized, and thence to the drying nozzles 29, here huge volumes of air are forced rapidly under essure into and around the cans, the air being further ickened in its movement by the exhaust apparatus —33, which also prevents the escape of the moisture-den air into the room. Meanwhile the covers have en similarly placed in the passageway 43 at the side the can passageway, and travel along the track oothly and without wedging, being successively ated to large volumes of water and air, the same as e cans. As the cans reach the outgoing end of the paratus, they ride along the incline and are gently d automatically turned over to roll down into the in-ined position shown in Figs. 4 and 6, for easy inspec-on. The inspector finds no difficulty in simply roll-g the can around in its receiving pocket 40, and as on as inspected he grasps a sterilized and dried cover, hich is ready at his hand for the purpose by reason of e construction and arrangement of the cover passage-ay next to the main passageway. Having placed the over on the can, the latter is ready for shipment. The irculation of water is maintained through the parts 4, 20, 19, 18, 17, 16, 15, 13, the latter, as the water ows back from the passageway, discharging said water nto the tank with sufficient force to keep the soda, soap r the like, stirred up and in proper solution.

The apparatus is so constructed that it needs practi-lly no attention, as it keeps itself clean, the constant own-flow of water along the inclined surfaces of the assageways keeping the apparatus continually washed, hile the discharge spout 3 serves to constantly remove proper portion of the more or less soiled washing fluid om the supply, the same being renewed properly as he apparatus continues in use.

As already intimated, I wish it understood that I ave not attempted herein to set forth the various em-odiments of which my invention is capable, but have onfined myself to an explanation of the preferred con-truction which I have found efficient for practical use n large milk depots.

Having described my invention, what I claim as new nd desire to secure by Letters Patent is,

1. In an apparatus of the kind described, a passageway or receiving milk cans, means for cleaning and drying the ilk cans as they pass through said passageway, and means djacent the outgoing end of the passageway for automat-ally turning said cans one at a time to an oblique up-urned position facing across the direction of the passage-ay to enable the operator to inspect the interior of each an.

2. An apparatus for cleaning large metal milk cans, com-rising a passageway having means extending lengthwise hereof for facilitating the passage of large milk cans, ncluding a track for receiving a can in inverted position, eans including a cut-off valve under the control of the perator for delivering an intermittent volume of rinsing ater to the interior of said inverted can, means opening nto said passageway for delivering a large volume of ashing fluid under high pressure to the interior of the ans in succession, means for sterilizing the washed cans, nd means for drying said sterilized cans.

3. An apparatus for cleansing large metal milk cans, com-rising means for delivering a large volume of washing luid under high pressure to the interior of the can, means or delivering a jet of washing fluid to the exterior of the an, means for thereafter rinsing the cans, means for hereafter sterilizing the cans, and means for finally de-ivering a huge volume of drying air under pressure to the nterior of the can.

4. An apparatus for cleaning large metal milk cans, com-prising a projecting track in position to receive a can in inverted position, a cleansing nozzle in position to deliver a jet of cleansing fluid to the interior of the can on said projecting track, a valve for controlling the delivery of said nozzle, manually operated means for opening said valve, a passageway from said tank, said track extending through said passageway for conveying the cans along the same, means for delivering a large volume of washing fluid to the interior of the cans as they pass along said passage-way, means for thereafter cleansing the cans, means for subsequently sterilizing the cans, and means adjacent the outgoing end of the passageway for delivering large vol-umes of air into the cans as they pass along.

5. An apparatus for cleaning large metal milk cans, com-prising a track in position to receive a can in inverted po-sition, a cleansing nozzle projecting in position to deliver a jet of cleansing fluid to the interior of the can on said track, a valve for controlling the delivery of said nozzle, manually operated means for opening said valve, a passage-way from said tank, said track extending through said passageway for conveying the cans along the same, means for delivering a large volume of washing fluid to the in-terior of the cans as they pass along said passageway, means for thereafter cleansing the cans, means for subse-quently sterilizing the cans, and means adjacent the out-going end of the passageway for delivering large volumes of air into the cans as they pass along, combined with suc-tion apparatus for accelerating the passage of said air through and from the passageway.

6. An apparatus for cleaning large metal milk cans, com-prising a closed passageway for large milk cans, having its forward end downwardly inclined and provided with a dis-charge basin, means for delivering into the cans as they pass through said passageway a large volume of washing fluid under high pressure, spraying means for thereafter spraying a large volume of cleansing fluid into said cans, means for thereafter delivering into said cans a large vol-ume of sterilizing steam and water, and means for deliver-ing a large volume of air under high pressure into and around the cans.

7. An apparatus for cleaning large metal milk cans, com-prising an overhanging support to receive the cans in in-verted position, a rinsing jet under the control of the oper-ator for delivering a powerful stream of water to the in-terior of the cans, a passageway leading from said over-hanging support for receiving the cans, means adjacent the front end of said passageway for delivering a large vol-ume of heated washing fluid to the interior of the cans as they proceed through said passageway, means for rinsing said cans, means for delivering sterilizing steam thereafter to said cans in said passageway, and means for thereafter delivering huge volumes of air under high pressure to said cans as they pass toward the outgoing end of said passage-way.

8. An apparatus for cleaning large metal milk cans, com-prising a support to receive the cans in inverted position, a rinsing jet under the control of the operator for deliver-ing a powerful stream of water to the interior of the cans, a passageway inclosing said support for receiving the cans, means adjacent the front end of said passageway for de-livering a large volume of heated washing fluid to the in-terior of the cans as they proceed through said passage-way, means for rinsing said cans, means for delivering sterilizing steam thereafter to said cans in said passage-way, means for thereafter delivering huge volumes of air under high pressure to said cans as they pass toward the outgoing end of said passageway, said support being lower and inclined at its back side at the outgoing end of the passageway for automatically tipping the cans for inspec-tion.

9. In an apparatus of the kind described, means for cleaning and drying milk cans means for delivering the cleaned milk cans in an inverted up-turned position, com-prising means for raising one side of said cans, means for the opposite side of said cans to lean against, said latter means having a downwardly and laterally inclined portion for causing the cans to roll into a horizontal position, and a pocket at the lower end of said inclined portion having its bottom downwardly inclined toward the rear for sup-porting said cans in position to be inspected.

10. In an apparatus of the kind described, means for cleaning and drying large milk cans, means for automatically inverting the cans into position to be inspected, consisting of means for supporting the cans in inverted upright position, means for tipping said cans, means cooperating therewith for causing said cans to roll gradually downward into a horizontal position, and means for receiving the horizontal cans and automatically raising their open ends into an upwardly inclined position.

11. In an apparatus of the kind described, the combination with a main passageway for receiving large milk cans, preliminary washing means at the entrance end of said passageway, and an inspection means at the outgoing end of said passageway, of an auxiliary smaller passageway located at one side of said main passageway, having its entrance end terminating at the entrance end of the main passageway and its outgoing end adjacent said inspectio means, whereby the operator is enabled to place the ca in one passageway and the covers in said auxiliary pa sageway at the entrance thereof, and place the covers tak from the outgoing end of said auxiliary passageway upo the cans at said inspection part of the apparatus, said au iliary passageway having washing means for washing th covers, sterilizing means for sterilizing the covers, and dry ing means for drying the covers as they pass through sai passageway.

In testimony whereof, I have signed my name to th specification, in the presence of two subscribing witnesse

CHARLES H. HOOD.

Witnesses:
M. J. SPALDING,
EDWARD MAXWELL.

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No. 864,132. PATENTED AUG. 20, 1907.

C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED OCT. 24, 1906.

2 SHEETS—SHEET 1.

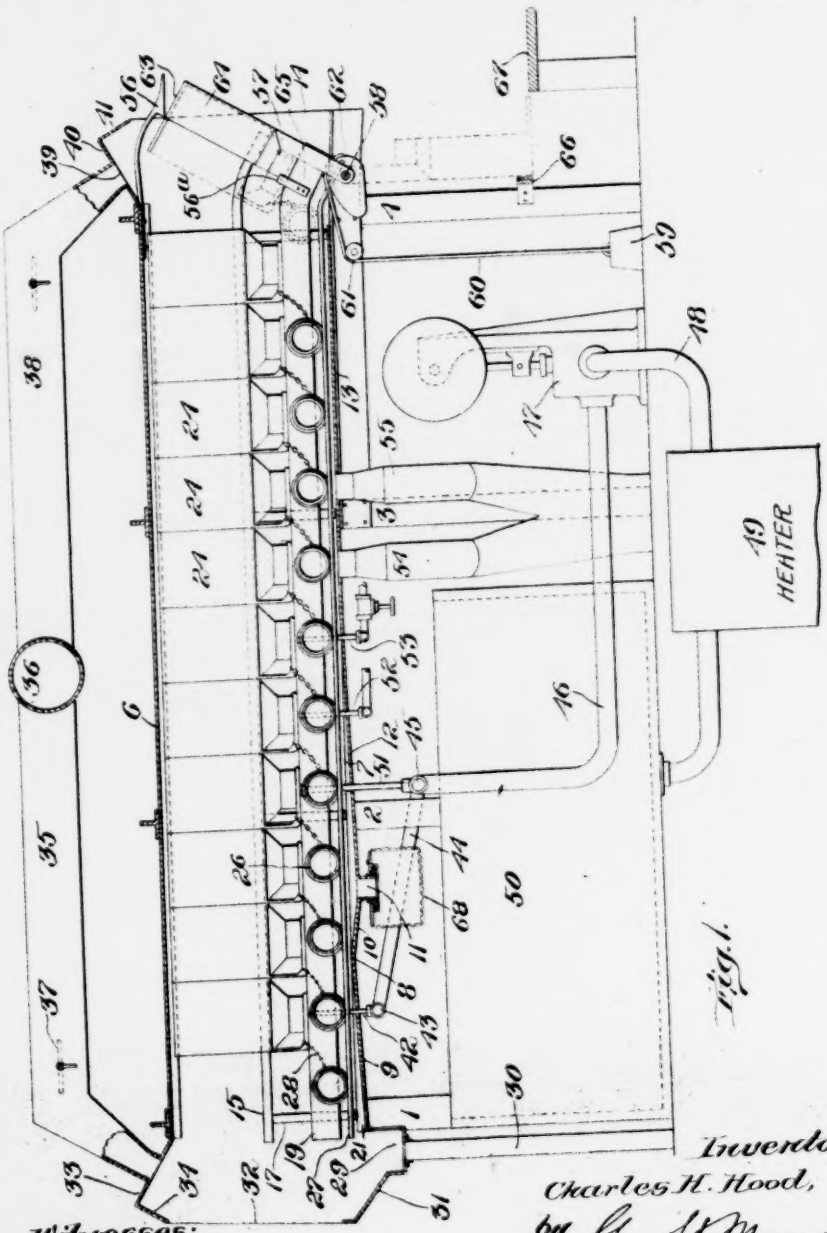

Fig. 1.

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644

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2 SHEETS—SHEET 2.

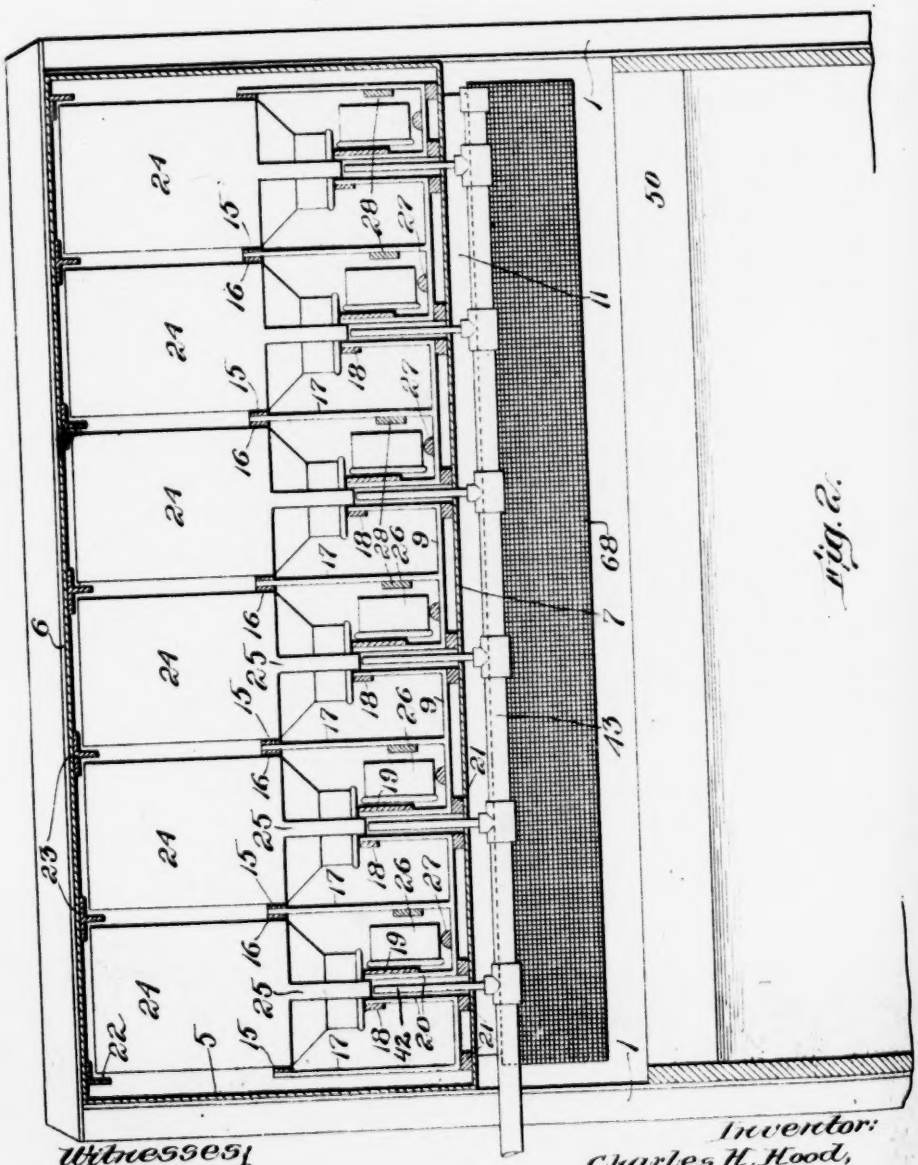

Fig. 2.

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UNITED STATES PATENT OFFICE.

CHARLES H. HOOD, OF SOMERVILLE, MASSACHUSETTS.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK-CANS.

No. 864,132. Specification of Letters Patent. Patented Aug. 20, 1907.

Application filed October 24, 1906. Serial No. 340,335.

To all whom it may concern:

Be it known that I, CHARLES H. HOOD, a citizen of the United States, and a resident of Somerville, in the county of Middlesex and State of Massachusetts, have invented an Improvement in Apparatus for Cleaning, Sterilizing, and Drying Milk-Cans, of which the following description, in connection with the accompanying drawings, is a specification, like letters on the drawings representing like parts.

My present invention is an improvement on the apparatus shown and described in my application Serial No. 303,643 filed March 1, 1906, and has for its object the thorough washing, drying and sterilizing of milk cans.

The problem of properly cleaning and drying milk cans is rendered extremely difficult from a practical standpoint on account of the fact that the metal so readily rusts and becomes foul unless rendered absolutely dry, the slightest moisture remaining in or on the cans causing them to rust rapidly, and accordingly I have finally succeeding in devising an apparatus in which I accomplish perfect drying of the sterilized and washed cans as they pass through the apparatus. Also I accomplish the thorough washing of the cans without any handling of the cans or direct hand manipulation of a brush or other washing medium, as in my previously mentioned application. I accomplish the washing by injecting a flood of water up into the cans under considerable pressure, so that the water itself strikes each point of the entire inside area of the can with even greater impinging force and certainty than the bristles of the brush previously used. Then the cans after passing through the sterilizing portion of the apparatus are subjected to a great volume of air in the form of an air blast, driven at such rapidity that it absorbs and takes up all the moisture almost instantly. In these respects my invention is distinguished by providing a large volume both of the water and of the air, thereby accomplishing what could not be accomplished by a small volume, especially when delivered in the manner and under the circumstances previously existing.

In carrying out my invention in its more complete embodiment I first subject the cans to a jet of rinsing water from a central tank, which removes in a general way any milk, ice or foreign substance, which thereupon flows down into a receptacle and thence into the sewer. Thence the cans pass successively over a special jet which delivers a great volume of cleansing water under pressure from said tank, the result being that the cans are instantly and thoroughly washed. Then the cans move forward in the closed passageway to a final cleansing jet, preferably of hot water, which removes the suds or cleansing solution, and preferably scalds the cans. Next the cans are subjected in their progress to sterilizing boiling water or steam and finally to a large continuous blast of air, preferably hot. In carrying out the five steps of the method thus outlined I make the initial rinsing jet and the final cleansing jet the same size, the latter delivering its water into the tank above mentioned from which the former jet takes its water, thereby maintaining the tank evenly supplied and constantly renewed with clean water, so that there is always abundant supply of the right kind of water at hand for the large-volume jet which does the washing or main cleansing and is located between the other two jets. Also I preferably so construct the passageway and arrange the jets, etc., that I am enabled to omit the sterilizing oven which constitutes a part of the invention set forth in my above mentioned application.

My present invention enables me to shorten and simplify the apparatus materially over my previous construction, and accomplish the work more automatically, the cans being automatically inverted also at the end, so that they may be conveniently inspected.

The constructional details of my invention and further advantages and the operation thereof will be pointed out more at length in the following description, taken in connection with the accompanying drawings, in which I have represented a preferred embodiment of the invention.

In the drawings, Figure 1 is a longitudinal sectional view through one of the passageways, showing the main constructional details of my invention; and Fig. 2 is a cross sectional view thereof taken at the entrance end.

It is important in this kind of an apparatus that the apparatus itself should be as neat and clean as possible and not liable to become foul; and accordingly I have made the framework as nearly self-cleaning as possible, and have constructed it mainly of plain metal rods or bars, and made removable as a whole from the inclosing structure.

Supported by suitable uprights 1, 2, 3, 4, is an inclosing housing consisting of side walls 5, top 6 and bottom 7. The bottom is downwardly inclined toward its forward end from a point 8, as indicated at 9, and from the point 8 rearwardly inclined at 10 to a discharge spout 11 and thence upwardly inclined again toward the rear at 12 to a point slightly beyond the last jet or nozzle, whence the bottom is level at 13 to the out-going end 14. On this bottom I place a skeleton framework divided into as many passageways or guideways as required to take care of the number of cans to be handled in a given length of time, six of said guideways being herein shown and each comprising opposite guide-bars 15, 16 supported at the upper ends of long uprights 17 and track bars 18, 19 supported on uprights 20. This frame is shoved into the housing lengthwise and is preferably supported on leveling plates 21 which give

the structure firmness and maintain its solid true position. To the top of the housing I secure angle irons 22, 23, extending longitudinally of the apparatus and located over the guide bars 15, 16, being spaced apart slightly wider than the cans, which are indicated at 24. The bars 22, 23 depend a sufficient distance for guiding engagement with the bottoms of the inverted cans, while the guide bars 15, 16, are so located that they engage the opposite ends of the cans next to the shoulder or conical top. The rails 18, 19, are spaced apart a sufficient distance to permit the free flow of the water and air, as will presently be explained, and also to receive handles 25 whose rounded surfaces engage between said rails to aid in maintaining the cans in proper position. The cans are also maintained in proper position by their stoppers or metal caps 26, which ride on a rounded rail 27 secured to the frame in a passageway provided therefor between the uprights 17 and 20, see Fig. 2. For the purpose of maintaining these stoppers in proper alinement and guiding them on the rail 27 I make the passage only slightly wider than the stoppers which are guided by the deep edge of rail 19 and an alining rail 28, as plainly shown in Figs. 1 and 2, whereby as they are dragged along by their chains they automatically maintain proper position. Small milk cans have their stoppers usually secured by chains in this manner, and I have found it difficult to devise a construction in which the stoppers would move along freely and smoothly without binding or interfering with the free forward movement of the cans. The construction shown however accomplishes the purpose, the track 27 being located at such a point that it tends to throw the weight of the stopper against the guiding flange 19.

At its entrance end the housing or inclosure is provided with a depression or catch basin 29 connecting by pipe 30 with the sewer 31, having a slanting front wall 31 at the opening 32. At the upper side of said opening I provide an upwardly inclined portion 33 terminating at its front edge in a downwardly extending part 34, which I have found aids materially in securing the proper draft through pipes 35, 36, a damper 37 being provided as shown, and a similar pipe 38 extending to the rear at 39 where similarly inclined parts 40, 41 perform the same office for the rear opening 14. The rinsing nozzles, already alluded to, are indicated at 42 projecting from a pipe 43 and arranged to deliver their jets of water in the passageways between the tracks 18, 19 for the respective series of cans as shown in Fig. 2. The pipe 43 is supplied with water under high pressure by a pipe 44 connecting with the pipe 45 and thence at 46 with a force pump or other source of pressure 47 supplied by a pipe 48 passing through a heater 49 and receiving its supply from a tank 50. From the pipe 45 project also large nozzles 51 preferably spreading the discharge in great volume.

One of the leading features of my present invention is the discharging of a large volume of cleansing liquid under high pressure into the interior of the cans, as I have found that thereby I can not only dispense with all other cleansing apparatus, such as rotary brushes and the like, but I can accomplish much better results, as the water impinges against the interior surfaces with great force at every point, so that no foreign substance can withstand the unremitting attack. The effect is almost instantaneous and is aided by having the water charged with soda or cleansing compound, soap or the like. Cleansing nozzles 52 from city-pressure pipes rinse out the soda water.

Steam jets 53 are provided beyond the cleansing nozzles 52 and supplied from any suitable source of steam under pressure, as for instance from the boiler of the factory. This live steam, taken in connection with the other features of the apparatus to be explained, quickly accomplishes the sterilizing required.

Just beyond the steam jets 53 are relatively large air pipes 54, 55, for delivering large volumes of rapidly moving air under pressure into and about the cans. This air is preferably heated, but more important yet is the provision of means for delivering the air in great volumes, as I have found that by providing a huge quantity of air under pressure it will carry away all the moisture remaining from the sterilizing steam. Also by packing the cans in comparatively tight, as shown, I am enabled to omit the oven of my previous application, as the cans themselves close the passage and coöperate with the huge volume of air and with the suction apparatus 35, 36, 38, to cause the air to circulate in and around, and under and over the cans with a rapid movement absorbing and taking along every particle of moisture, so that when the cans have traveled the short distance remaining to the out-going end 14 of the apparatus they are thoroughly dried. Upon arriving at the out-going end the upwardly turned bottom of the outermost can is caught by a spring hook 56 and catch 56ª which arrest further movement until the previous can has been inspected and removed. Thereupon a holder 57 is swung upwardly on its pivot 58 by a counter weight 59 whose cord 60 passes over a pulley 61 and is secured to a lever 62 in proper position to effect the upward swinging movement when the holder is empty. The holder comprises a bottom 63 and a hollow or embracing pocket-like portion 64, against which the can tips to be retained against accidentally tipping sideways. The tracks at their ends bend downwardly as indicated at 65, so as to give the cans a throw or forward impulse to coöperate with the holder in automatically dumping or inverting the cans for inspection. When the can thus automatically seats itself in the holder the weight of the can causes the holder to turn downwardly into the dotted position Fig. 1, where it strikes against a padded rest 66 and remains until the inspector takes up the can, and after inspection passes it along to a platform 67. The automatic upward swinging of the holder causes its bottom to engage the forward slanting end of the hook 56 and thereby lift the hook from engagement with a can, permitting the latter to drop into the holder as explained. The water automatically takes care of itself, the incline to the point 8 acting the same as a dam to direct the dirty rinsings at the beginning into the catch basin and sewer, and the incline at the rear of said dam 8 acting to deflect the cleaner suds or washing fluid and the fresh supply of city-pressure water to the discharge spout 11, whence it flows into the tank. A screen 68 is provided surrounding the discharge end of said spout 11 and is made removable, so that any coarse material removed from the cans is strained out of the water and the removing of the screen or strainer makes it

convenient to clean the apparatus quickly. The cleansing nozzle 52 is preferably the same size as the rinsing nozzle 42, so that thereby the water in the tank is kept level automatically, the rinsing nozzle removing the water only as fast as the cleansing nozzle supplies fresh water. The washing nozzle supplies its large volume of sprayed or enlarged discharge of water without affecting the supply in the tank, inasmuch as all this water runs back directly into the tank. One reason the tank is provided is to make possible this large-volume discharge of heated washing fluid at uniform high pressure.

The operation of the apparatus above described is as follows: The cans are taken up preferably one by one from the floor or a conveyer, and any milk, ice, water or the like contained therein is dumped down the inclined front 31 into the catch basin 29 and the can is placed in an inverted position on the tracks 18, 19, its handle being placed between said tracks as shown in the drawings, and the metal stopper placed at one side on the stopper track. Thereupon the can is shoved along until it comes over the rinsing nozzle 42, where it receives a powerful jet of water, which instantly removes any easily removed matter still remaining on the inside or outside of the can, and this matter and the rinsing water flow down the incline 9 to the catch basin 21. Meanwhile another can has been put in position and its forward movement causes the preceding can to be moved forward, and so on, until the roughly cleansed can is brought over the washing nozzle 51 where it is instantly subjected to a large volume of washing fluid at high pressure, preferably delivered with more or less whirl and spreading movement, so that the complete washing of the can takes place in a movement, as I have already explained. The can is now moved along with the series of cans over the sterilizing jets of steam or boiling water, which subject the cans to an intense and moist heat under the proper conditions for sterilizing. As soon as they have passed the jets of sterilizing steam the cans are subjected to a huge blast of air preferably driven at high pressure, which operates to absorb all the moisture from the heated surfaces of the cans, these volumes of highly driven air from the pipes 54, 55 being further accelerated by the exhaust or suction apparatus 35, 36 39 which likewise prevents the moisture-laden air from escaping from the ends of the inclosure into the room. As the cans pass from the track they fall automatically onto the holder and are turned down into proper position for inspection. The shape of the lever 62 causes the heavy cans to be let down gently without injury.

This apparatus is primarily intended for small and medium size milk cans, which require to be handled rapidly and in large numbers. In another copending application I have set forth a special form of apparatus for handling large milk cans. It will be understood that the problem of treating metal cans is entirely different from that presented in handling glass bottles, as corrosion sets in quickly if any moisture is allowed to remain, and they much more readily become foul, collect bacteria, etc. Moreover, it is the tin vessel rather than the glass vessel which the wholesaler has to distribute to the farmers, and therefore the greatest care in thoroughly sterilizing and drying said cans is necessary because they immediately get out from under the observation of the wholesaler, who is the responsible party to whom the city inspection authorities look for maintaining the hygienic conditions required by law.

My apparatus enables the wholesaler to meet the exacting requirements in these respects, notwithstanding the fact that the cans are treated by the thousands and with such great rapidity.

While I have set forth my invention in all its preferred details, I wish it understood that many variations in details and in the combination of parts may be resorted to without departing from the spirit and scope of my invention.

My present invention is a species of the generic invention set forth in my application Ser. No. 303,643 filed March 1, 1906, where the broad invention is duly claimed, and accordingly it will be understood that I have omitted herein certain claims which I would otherwise make in this case.

Having described my invention, what I claim as new and desire to secure by Letters Patent is,

1. An apparatus of the kind described, comprising a continuous passageway, means therein for washing the cans, steam delivering nozzles for sterilizing the cans, and air delivering nozzles for drying the cans, all located in said single continuous passageway, said steam delivering nozzles being located to operate on the cans immediately next to the washing means contained in said passageway, and said air delivering nozzles being located immediately next to the steam delivering nozzles to operate on the cans immediately after the cans leave the stem delivering nozzles, said washing means, steam delivering nozzles and air delivering nozzles being constructed and arranged to deliver large volumes of washing fluid, steam and air respectively, under pressure within and without the cans as they pass along.

2. An apparatus of the kind described, comprising a passageway, provided with an initial rinsing nozzle, an intermediate washing nozzle and a final cleansing nozzle, in line to operate upon the cans in succession as the cans move along in said passageway, a tank, means for delivering the water discharged from said washing nozzle and cleansing nozzle back into said tank, connections for forcing water from said tank to said rinsing nozzle and to said washing nozzle, and a connection from an independent source to said cleansing nozzle, whereby said tank is constantly replenished from the latter nozzle and the fluid withdrawn by said rinsing nozzle.

3. An apparatus of the kind described, comprising a passageway, provided with an initial rinsing nozzle, an intermediate washing nozzle and a final cleansing nozzle, in line to operate upon the cans in succession as the cans move along in said passageway, a tank, means for delivering the water discharged from said washing nozzle and cleansing nozzle back into said tank, connections for forcing water from said tank to said rinsing nozzle and to said washing nozzle, and a connection from an independent source to said cleansing nozzle, whereby said tank is constantly replenished from the latter nozzle and the fluid withdrawn by said rinsing nozzle, said rinsing nozzle and cleansing nozzle having the same capacity, whereby the supply of water in the tank tends to remain at a uniform level.

4. An apparatus of the kind described, comprising a passageway, provided with an initial rinsing nozzle, an intermediate washing nozzle and a final cleansing nozzle, in line to operate upon the cans in succession as the cans move along in said passageway, a tank, means for delivering the water discharged from said washing nozzle and cleansing nozzle back into said tank, connections for forcing water from said tank to said rinsing nozzle and to said washing nozzle, and a connection from an independent source to said cleansing nozzle, whereby said tank is constantly replenished from the latter nozzle and the fluid

withdrawn by said rinsing nozzle, said rinsing nozzle and cleansing nozzle having the same capacity and said washing nozzle having a considerably larger capacity.

5. An apparatus of the kind described, comprising a passageway, provided with an initial rinsing nozzle, an intermediate washing nozzle and a final cleansing nozzle, in line to operate upon the cans in succession as the cans move along in said passageway, a tank, said passageway between said rinsing nozzle and washing nozzle having means for directing the flow of rinsing water from the cans outwardly, toward the front end of the apparatus, a catch basin arranged to receive the same, said passageway being provided with means for delivering the water from said washing nozzle and cleansing nozzle into said tank.

6. An apparatus of the kind described, comprising a passageway, a depressed catch basin at the front end of said passageway provided with a raised front side, against which the operator may rest cans for dumping, a rinsing nozzle adjacent said catch basin for rinsing the cans when dumped, a raised portion at the rear of said rinsing nozzle for deflecting the water therefrom into said catch basin, a large-volume washing nozzle at the rear of said deflecting means, a tank beneath said passageway, the bottom of said passageway adjacent said washing nozzle being depressed to deliver the washing refuse to said tank, and a removable screen for straining the washing water as it flows into said tank.

7. An apparatus of the kind described, comprising means for sterilizing metal milk cans, means for entirely drying said sterilized metal milk cans, and means for automatically inverting said cans for inspection.

8. An apparatus of the kind described, comprising means for sterilizing metal milk cans, means for entirely drying said sterilized metal milk cans, and a holder at the outgoing end of the apparatus provided with a counter weight for normally moving said holder into can-receiving position, constructed to be over-weighted by the presence of a can and to be turned thereby into can-delivering position.

9. An apparatus of the kind described, comprising means for sterilizing metal milk cans, means for entirely drying said sterilized metal milk cans, a holder provided with a counter weight for normally moving said holder into can-receiving position, constructed to be over-weighted by the presence of a can and to be turned thereby into can-delivering position, and means for automatically stopping a can when said holder is engaged by a previous can, said stopping means being automatically tripped to release said restrained can by the return movement of said holder.

10. An apparatus of the kind described, comprising a passageway for receiving metal milk cans to be washed and dried, and a removable track in the bottom of said passageway on which the cans travel, said track being composed of bar metal supports having longitudinal track-bars for the handle ends of the cans to rest upon, a longitudinal track-bar at one side of the main tracks for receiving the stoppers of the cans set edgewise, said main tracks being raised above said stopper track sufficiently to maintain the cans substantially above their stoppers as they move through said passageway.

11. An apparatus of the kind described, comprising a passageway for receiving metal milk cans to be washed and dried, a track in the bottom of said passageway on which the cans travel, said track having longitudinal track bars spaced apart sufficiently to permit the handles of the cans to rest between them, and arranged for the handle ends of the cans to rest upon, a longitudinal track bar at one side of the aforesaid tracks to receive the stoppers of the cans set edgewise, said longitudinal track bar being below the other tracks sufficiently to maintain the stoppers entirely beneath the lower ends of the cans as they move through the passageway, said track having a longitudinally extending portion depending beneath the cans at the side of the stoppers to guide the latter and to help maintain the stoppers in edgewise and free moving position.

12. An apparatus of the kind described, comprising a passageway for receiving metal milk cans to be washed and dried, a track in the bottom of said passageway on which the cans travel, said track having longitudinal track bars spaced apart sufficiently to permit the handles of the cans to rest between them, and arranged for the handle ends of the cans to rest upon, a longitudinal track bar at one side of the aforesaid tracks to receive the stoppers of the cans set edgewise, said longitudinal track bar being below the other tracks sufficiently to maintain the stoppers entirely beneath the cans as they move through the passageway, said track having a longitudinally extending portion depending beneath the cans at the side of the stoppers to guide the latter and to help maintain the stoppers in edgewise and free moving position, and an opposite aligning rail extending longitudinally of said bottom track and projecting close to the stoppers, affording a passage for the latter only slightly wider than the stoppers, for guiding and maintaining the stoppers in proper alinement as they move through the passage.

In testimony wherreof, I have signed my name to this specification, in the presence of two subscribing witnesses.

CHARLES H. HOOD.

Witnesses:
M. J. SPALDING,
E. MAXWELL.

do not number this as
a duplicate

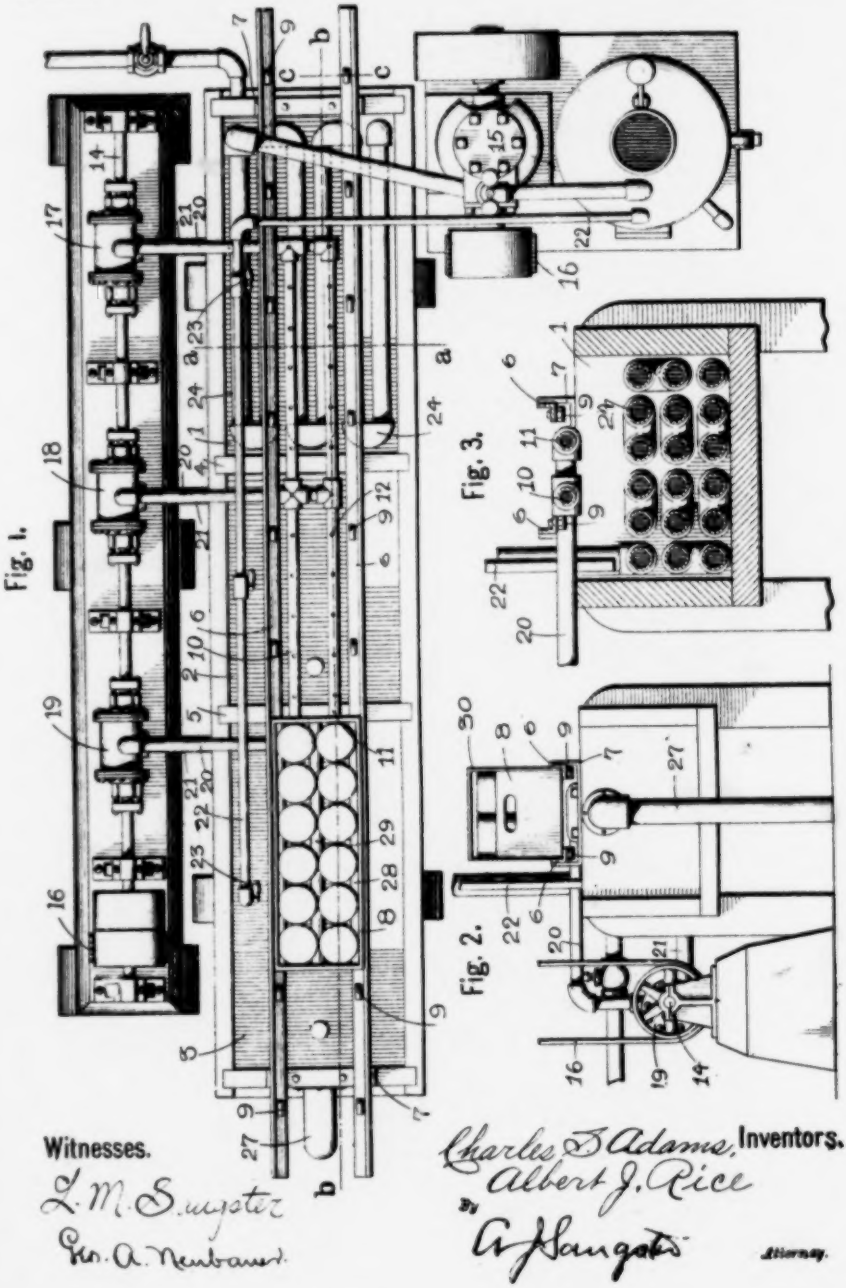
No. 745,752. PATENTED DEC. 1, 1903.

C. S. ADAMS & A. J. RICE.

METHOD OF CLEANING AND STERILIZING MILK BOTTLES, &c.

APPLICATION FILED AUG. 1, 1903.

NO MODEL. 2 SHEETS—SHEET 1.



Witnesses.
L. M. Swyster
Geo. A. Neubauer.

Inventors.
Charles S. Adams,
Albert J. Rice
By A. J. Langston
Attorney.

No. 745,752. PATENTED DEC. 1, 1903.

C. S. ADAMS & A. J. RICE.

METHOD OF CLEANING AND STERILIZING MILK BOTTLES, &c.

APPLICATION FILED AU[illegible], 1903.

NO MODEL. 2 SHEETS—SHEET 2.

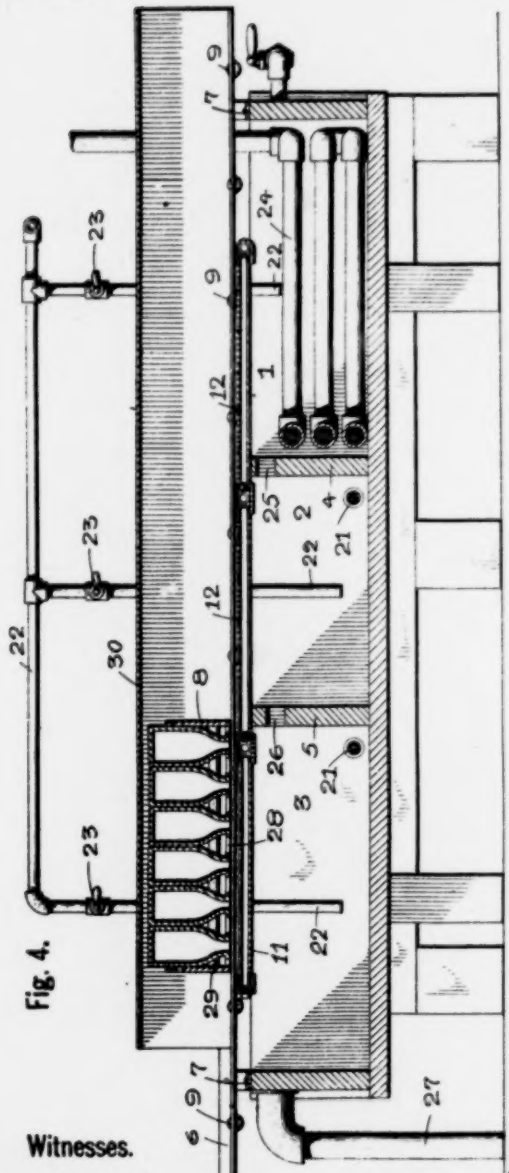


Fig. 4.

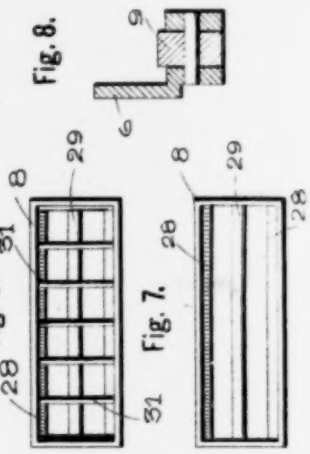


Fig. 8.

Fig. 6.

Fig. 7.

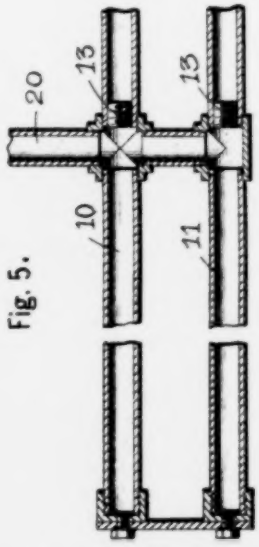


Fig. 5.

Witnesses.

L. M. Bangster

Geo. A. Neubauer

Inventors.

Charles S. Adams.

Albert J. Rice.

By A. J. Langsters Attorney.

No. 745,752. Patented December 1, 1903.

UNITED STATES PATENT OFFICE.

CHARLES S. ADAMS AND ALBERT J. RICE, OF BUFFALO, NEW YORK.

METHOD OF CLEANING AND STERILIZING MILK-BOTTLES, &c.

SPECIFICATION forming part of Letters Patent No. 745,752, dated December 1, 1903.

Application filed August 1, 1903. Serial No. 167,893. (No model.)

To all whom it may concern:

Be it known that we, CHARLES S. ADAMS and ALBERT J. RICE, citizens of the United States, residing at Buffalo, in the county of Erie and State of New York, have invented a certain new and useful Improved Method of Cleaning and Sterilizing Milk-Bottles and Similar Articles, of which the following is a specification.

This invention relates to an improved method of cleaning and sterilizing milk-bottles and similar articles, which consists in exposing the bottles to be cleaned to a plurality of jets of water under strong pressure which successively increase in temperature.

The object of the invention is to thoroughly clean and sterilize bottles or the like in a simple and comparatively rapid manner and to obviate the danger of breakage by heating the bottles gradually.

For a description of the preferred form of apparatus employed reference is to be had to the accompanying drawings, in which—

Figure 1 represents a plan view of the apparatus. Fig. 2 is an end elevation of the apparatus looking in the direction of the arrow V, Fig. 1, with the boiler and engine omitted. Fig. 3 is an enlarged cross-section through the tank on line *a a*, Fig. 1. Fig. 4 is a vertical longitudinal section on line *b b*, Fig. 1. Fig. 5 is a central longitudinal section through a fragment of the cleaning-pipes. Fig. 6 is a detached plan view of the box for holding pint bottles. Fig. 7 is a detached plan view of the box for holding quart bottles. Fig. 8 is a section on line *c c*, Fig. 1, through one of the angle-iron tracks.

In the preferred apparatus shown like numerals designate like parts.

The preferred type of apparatus herein shown forms the subject of a companion application, Serial No. 114,871, filed July 9, 1902.

A long rectangular-shaped tank or trough is divided into three compartments 1, 2, and 3 by transverse partitions 4 and 5. Two parallel angle-irons 6 are supported above the top of the trough and extend longitudinally throughout its length, being attached to the cross-irons 7, which extend transversely across the top of the trough. These angle-irons 6 form tracks on which boxes 8, containing bottles in inverted position, are moved and are arranged in opposed position with their horizontal portions extending inwardly toward each other and from the lower extremity of their vertical portions. Rollers 9 may be placed in the horizontal portions of the angle-irons to facilitate the moving of the boxes. Two pipes 10 and 11 are supported on the trough beneath the tracks and extend longitudinally thereof and are each provided with a series of vertical openings 12, which are arranged at regular intervals in the pipes. These pipes 10 and 11 extend throughout the length of the trough and are each divided into three separate and non-communicating parts by plugs 13. A horizontal shaft 14 is arranged at one side of the trough and is connected to an engine 15 of any well-known form by a belt 16 or other power-transmitting means. Three rotary pumps 17, 18, and 19 are mounted so that the shaft 14 passes through them. An outlet-pipe 20 is connected at the top of each rotary pump and extends into connection with one part of the pipes 10 and 11. An inlet-pipe 21 connects at its respective ends to the lower portion of each compartment and the lower portion of each pump. The water in the compartments is first heated by means of steam-pipes 22, which extend from the boiler of the engine and have their outer ends projecting into the compartments beneath the surface of the water to discharge the steam therein. These pipes are provided with shut-off valves 23, which are opened when the compartments are first filled with water to heat the same. After the water in the compartments reaches the desired temperature the valves 23 are closed, and the succeeding water as it enters is maintained in heated condition by means of a coil of pipe 24, placed in the compartment 1 and connected to the exhaust of the engine.

The jets are spaced or separated according to the articles to be cleaned. For instance, the jets used for washing milk-bottles or the

like, which have their mouths separated equally from each other, are arranged at regular intervals, so that all the jets will be vertically below the center of the bottle-mouths when the bottles are moved into a position vertically above said jets. By this means the interior of all of the bottles is thoroughly washed. The exterior surface of the bottles is washed by the jets as the bottles are moving from a position above one compartment to a position above another compartment.

The partition 4 between compartments 1 and 2 is provided with an opening 25 near the top, which permits the water to flow into compartment 2, and the partition 5 between compartments 2 and 3 has a similar opening 26, which permits the water to pass into compartment 3. The water as it flows from compartment 1 through compartments 2 and 3 is gradually cooled by atmospheric temperature, and substantially the same water is used in each compartment, thereby economizing in the volume of water used. The arrangement of the compartments is such that the water is in its cleanest and hottest conditions when used in compartment 1, into which it first passes, as before described, and over which the bottles receive their last washing. The water is in its coolest condition in compartment 3, where the bottles receive the first cleaning. The advantage of this is that as the bottles advance over the jets they become gradually cleaner and are exposed successively to water which becomes gradually cleaner and hotter, and thus are thoroughly cleaned and sterilized without danger of breakage by sudden expansion.

A washing compound of any well-known composition may be used, if desired, in compartment 3 and perhaps compartment 2 to assist in cleaning unusually dirty bottles.

The object in using pumps is to secure strong pressure of water in the cleaning-pipes 10 and 11, and thus secure sufficient hydraulic force to thoroughly clean off the surface of the bottles.

The waste water is conducted from compartment 3 by a pipe 27.

The boxes for containing the large bottles, such as quart bottles, are each provided with two cleats 28, secured to the interior thereof, and a central brace 29, so that two rows of bottles can be supported in inverted position in each box. A long rectangular cover 30 is placed over the trough to prevent the water spurting out over the top. The boxes for containing small bottles, such as pint bottles, are provided with a series of additional transversely-extending cleats or braces 21, substantially as shown in Fig. 6, to separate the bottles of each row from each other, and thus arrange their mouths at substantially the same distance from each other that the large bottles occupy in the boxes for containing said large bottles.

This improved method of cleaning and sterilizing is preferably carried out as follows: The dirty bottles are arranged in the boxes in inverted position and the boxes are placed on the tracks and pushed through between the trough and cover 30, passing successively above the various jets of water. The boxes are placed one by one on the tracks and stand for a short interval above each compartment, the movement of a new box on the tracks moving the preceding boxes one step forward. By this means the boxes successively stop over each series of jets, which enables the water to thoroughly clean both the inside and outside of the bottles. The bottles are first moved over compartment 3, where they are washed by jets of moderately-warm water, then advanced over compartment 2, where they are subjected to jets of still hotter water, and finally moved above compartment 1, where the washing is finished and the bottles sterilized by jets of water of a temperature at or near the boiling-point. In some instances jets of live steam may be employed in lieu of the water-jets in compartment 1 in order to make absolutely certain of the sterilization of the bottles. From this arrangement of the compartments of the trough the bottles are exposed to water of increasing temperature as they pass through, as before described. The bottles are thus gradually heated and expanded, which prevents breakage. The water is spurted through the openings 12 with sufficient force by the pumps 17, 18, and 19 to completely clean both the inside and outside of the bottles, and the boiling condition of the water in compartment 1 thoroughly sterilizes the same.

By this improved method the bottles are thoroughly and rapidly cleaned by the action of water all over without the aid of brushes, and are sterilized without danger of breakage, owing to the manner in which they are gradually heated by successive exposures to increasing temperatures.

We claim as our invention—

1. An improved process for cleaning and sterilizing milk-bottles or the like, which consists in exposing the bottles to be cleaned to a plurality of jets of water under strong pressure which successively increase in temperature, substantially as set forth.

2. An improved process for cleaning and sterilizing milk-bottles and the like, which consists in slowly passing the bottles in inverted position above a series of jets of water under strong pressure, the temperature of the successive jets gradually increasing from moderately-hot water to boiling water as the bottles move forward, substantially as set forth.

3. An improved process for cleaning and sterilizing milk-bottles and the like, which consists in moving the bottles in inverted position over a long trough and exposing them

to jets of heated water under strong pressure, the temperature of the water gradually increasing from one end of the trough to the other, substantially as set forth.

4. An improved process for cleaning and sterilizing milk-bottles or the like, which consists in exposing the bottles to be cleaned to a plurality of heated jets of successively-increasing temperature, substantially as set forth.

CHARLES S. ADAMS.
ALBERT J. RICE.

Witnesses:
L. M. SANGSTER,
GEO. A. NEUBAUER.

650

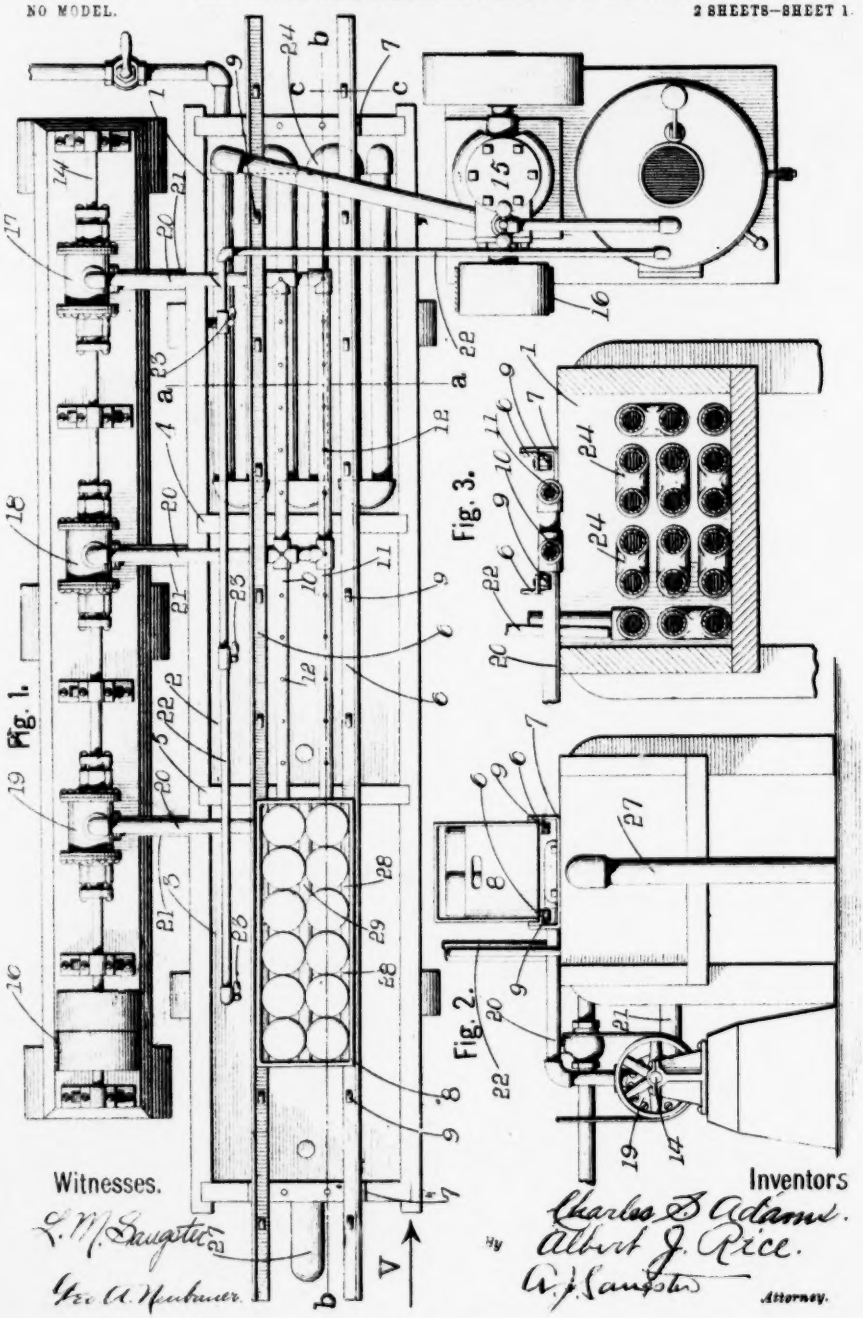
No. 764,222. PATENTED JULY 5, 1904.

C. S. ADAMS & A. J. RICE.

APPARATUS FOR CLEANING AND STERILIZING MILK BOTTLES OR SIMILAR ARTICLES.

APPLICATION FILED JULY 9, 1902. RENEWED APR. 25, 1903.

NO MODEL. 2 SHEETS—SHEET 1.



Witnesses.

L. M. Saugstad

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Inventors

Charles S. Adams.

Albert J. Rice.

By A. J. Saugstad Attorney.

652

No. 764,222. PATENTED JULY 5, 1904.

C. S. ADAMS & A. J. RICE.

APPARATUS FOR CLEANING AND STERILIZING MILK BOTTLES OR SIMILAR ARTICLES.

APPLICATION FILED JULY 9, 1902. RENEWED APR. 25, 1903.

NO MODEL. 2 SHEETS—SHEET 2.

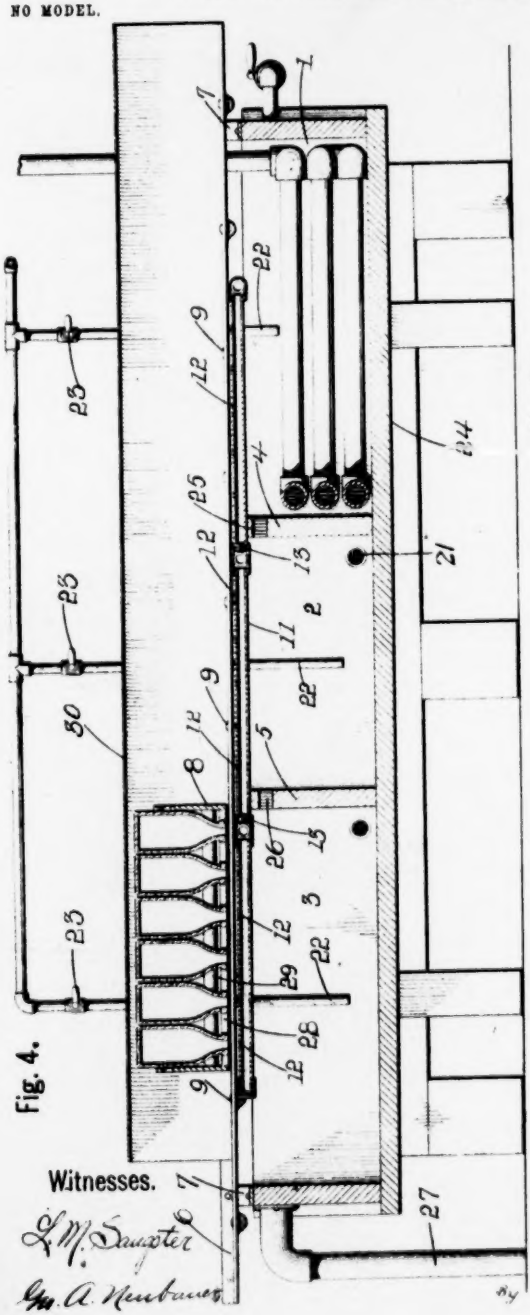

Fig. 4.

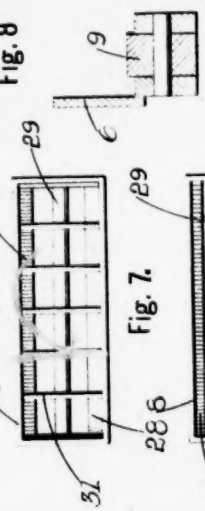

Fig. 8

Fig. 6.

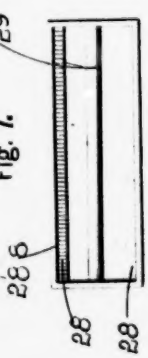

Fig. 7.

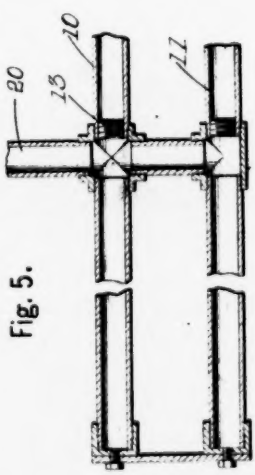

Fig. 5.

Witnesses.

L. M. Sangster

Geo. A. Neubauer.

Inventors.

Charles S. Adams.

Albert J. Rice.

R. J. Sangster Attorney.

No. 764,222. Patented July 5, 1904.

UNITED STATES PATENT OFFICE.

CHARLES S. ADAMS AND ALBERT J. RICE, OF BUFFALO, NEW YORK.

APPARATUS FOR CLEANING AND STERILIZING MILK-BOTTLES OR SIMILAR ARTICLES.

SPECIFICATION forming part of Letters Patent No. 764,222, dated July 5, 1904.

Application filed July 9, 1902. Renewed April 25, 1903. Serial No. 154,366. (No model.)

To all whom it may concern:

Be it known that we, CHARLES S. ADAMS and ALBERT J. RICE, citizens of the United States, residing at Buffalo, in the county of Erie and State of New York, have invented certain new and useful Improvements in Apparatus for Cleaning and Sterilizing Bottles or Similar Articles, of which the following is a specification.

This invention relates to an improved apparatus for cleaning and sterilizing milk-bottles or the like.

The object of the invention is to thoroughly clean and sterilize bottles or the like in a simple and comparatively rapid manner by passing them in an inverted position above a series of openings from which heated water spurts under a fairly high pressure.

The invention also relates to certain details of construction, all of which will be fully and clearly hereinafter described and claimed, reference being had to the accompanying drawings, in which—

Figure 1 represents a plan view of the apparatus. Fig. 2 is an end elevation of the apparatus looking in the direction of the arrow V, Fig. 1, with the boiler and engine omitted. Fig. 3 is an enlarged cross-section through the tank on line *a a*, Fig. 1. Fig. 4 is a vertical longitudinal section on line *b b*, Fig. 1. Fig. 5 is a central longitudinal section through a fragment of the cleaning-pipes. Fig. 6 is a detached plan view of the box for holding pint bottles. Fig. 7 is a detached plan view of the box for holding quart bottles. Fig. 8 is a section on line *c c*, Fig. 1, through one of the angle-iron tracks.

In the preferred adaptation of the invention shown like numerals designate like parts.

A long rectangular-shaped tank or trough is divided into three compartments 1, 2, and 3 by transverse partitions 4 and 5. Two parallel angle-irons 6 are supported above the top of the trough and extend longitudinally throughout its length, being attached to the cross-irons 7, which extend transversely across the top of the trough. These angle-irons 6 form tracks on which boxes 8, containing bottles in inverted position, are moved and are arranged in opposed position with their horizontal portions extending inwardly toward each other and from the lower extremity of their vertical portions. Rollers 9 may be placed in the horizontal portions of the angle-irons to facilitate the moving of the boxes. Two pipes 10 and 11 are supported on the trough beneath the tracks and extend longitudinally thereof and are each provided with a series of vertical openings 12, which are arranged at regular intervals in the pipes. These pipes 10 and 11 extend throughout the length of the trough and are each divided into three separate and non-communicating parts by plugs 13.

A horizontal shaft 14 is arranged at one side of the trough and is connected to an engine 15 of any well-known form by a belt 16 or other power-transmitting means. Three rotary pumps 17, 18, and 19 are mounted so that the shaft 14 passes through them. An outlet-pipe 20 is connected to the top of each rotary pump and extends into connection with one part of the pipes 10 and 11. An inlet-pipe 21 connects at its respective ends to the lower portion of each compartment and the lower portion of each pump.

The water in the compartments is first heated by means of steam-pipes 22, which extend from the boiler of the engine and have their outer ends projecting into the compartments beneath the surface of the water to discharge the steam therein. These pipes are provided with shut-off valves 23, which are opened when the compartments are first filled with water to heat the same. After the water in the compartments reaches the desired temperature the valves 23 are closed and the succeeding water as it enters is maintained in heated condition by means of a coil of pipe 24 placed in the compartment 1 and connected to the exhaust of the engine. The jets are spaced or separated, according to the articles to be cleaned. For instance, the jets used for washing milk-bottles or the like, which have their mouths separated equally from each other, are arranged at regular intervals, so that all the jets will be vertically below the center of the bottle-mouths when the bottles are moved into

a position vertically above said jets. By this means the interior of all of the bottles is thoroughly washed. The exterior surface of the bottle is washed by the jets as the bottles are moving from a position above one compartment to a position above another compartment.

The partition 4 between compartments 1 and 2 is provided with an opening 25 near the top, which permits the water to flow into compartment 2, and the partition 5 between compartments 2 and 3 has a similar opening 26, which permits the water to pass into compartment 3.

The water as it flows from compartment 1 through compartments 2 and 3 is gradually cooled by atmospheric temperature, and substantially the same water is used in each compartment, thereby economizing in the volume of water used.

The arrangement of the compartments is such that the water is in its cleanest and hottest condition when used in compartment 1, into which it first passes, as before described, and over which the bottles receive their last washing.

The water is in its coolest condition in compartment 3, where the bottles receive their first cleaning. The advantage of this is that as the bottles advance over the jets they become gradually cleaner and are exposed successively to water which becomes gradually cleaner and hotter, and thus are thoroughly cleaned and sterilized.

A washing compound of any well-known composition may be used, if desired, in compartment 3 and perhaps compartment 2 to assist in cleaning unusually-dirty bottles.

The object in using pumps is to secure strong pressure of water in the cleaning-pipe 10 and 11, and thus secure sufficient hydraulic force to thoroughly clean off the surface of the bottles.

The waste water is conducted from compartment 3 by a pipe 27.

The boxes for containing the large bottles, such as quart bottles, are each provided with two cleats 28, secured to the interior thereof, and a central brace 29, so that two rows of bottles can be supported in inverted position in each box. A long rectangular cover 30 is placed over the trough to prevent the water spurting out over the top.

The boxes for containing small bottles, such as pint bottles, are provided with a series of additional transversely-extending cleats or braces 31, substantially as shown in Fig. 6, to separate the bottles of each row from each other and thus arrange their mouths at substantially the same distance from each other that the large bottles occupy in the boxes for containing said large bottles.

The operation of the preferred type of this apparatus is as follows: The dirty bottles are arranged in the boxes in inverted position, and the boxes are placed on the tracks and pushed through between the trough and cover 30, passing successively above the various jets of water. The boxes are placed one by one and stand for a short interval above each compartment, the movement of a new box on the tracks moving the preceding boxes one step forward. By this means the boxes successively stop over each series of jets, which enables the water to thoroughly clean both the inside and outside of the bottles. The bottles are first washed by the jets over compartment 3, then advanced over compartment 2, when they are subjected to jets of still hotter water and finally moved above compartment 1, where the washing is finished and the bottles sterilized by jets of water of a temperature at or near boiling-point. From this arrangement of the compartments of the trough the bottles are exposed to water of increasing temperature as they pass through, as before described. The bottles are thus gradually heated and expanded, which prevents breakage. The water is spurted through the openings 13 with sufficient force by the pumps 17, 18, and 19 to completely clean both the inside and outside of the bottles, and the boiling condition of the water in compartment 1 thoroughly sterilizes the same.

It is obvious that the trough or tank may be divided into more or less compartments, as desired, that other forms of pumps instead of rotary pumps may be used, that the water may be heated to boiling-point by means other than a pipe-coil, and that other elements or parts may be varied or changed within the scope of this invention.

We claim as our invention—

1. An improved apparatus for cleaning milk-bottles or the like, comprising a trough, a box adapted to hold the bottles in inverted position and to pass over the trough, a pipe in said trough having openings adapted to spurt water into said bottles as they pass, a pump connected to said pipe, and means for heating the water, substantially as set forth.

2. An improved apparatus for cleaning milk-bottles or the like, comprising a trough divided into a plurality of compartments, a box adapted to pass over the trough in which the bottles are supported in inverted position, pipes supported on said trough and having openings, a pump connected to said pipe, and a steam-pipe for heating the water.

3. An improved apparatus for cleaning milk-bottles or the like, comprising a trough divided into a plurality of compartments by transverse partitions which are provided with openings for the passage of water from compartment to compartment, a box holding bottles in inverted position adapted to pass over the trough, a pipe for introducing water into one of the end compartments, a pipe for re-

moving the waste water from the other end compartment, pipes extending longitudinally of the trough and having openings and pumps for forcing water through said pipes under pressure.

4. An improved apparatus for cleaning milk-bottles or the like comprising a trough over which bottles are adapted to be passed in inverted position, a track on the trough on which boxes containing bottles are moved, pipes on the trough having openings and means for forcing water under pressure through said pipes, substantially as set forth.

5. An improved apparatus for cleaning milk-bottles or the like having a trough divided into communicating compartments, a cleaning-pipe divided into non-communicating sections and having a series of openings, a plurality of pumps, pipes connecting the pumps to the compartments and pipes connecting the pumps to the sections of the cleaning-pipe, substantially as set forth.

6. An improved apparatus for cleaning milk-bottles or the like having a trough divided into communicating compartments, a cleaning-pipe divided into non-communicating sections and having a series of openings, a plurality of pumps having connection by piping to the compartments and the sections of the cleaning-pipe, substantially as set forth.

7. An improved apparatus for cleaning and sterilizing milk-bottles, having an engine, a pump operated from the engine, a trough, a pipe connecting the trough to the pump, a cleaning-pipe connecting to the pump, and a pipe for supplying water to the trough and means for heating the water, substantially as set forth.

8. An improved apparatus for cleaning and sterilizing milk-bottles, having an engine, a trough divided into compartments, a plurality of pumps operated from the engine, a pipe connecting each compartment to one of the pumps, two cleaning-pipes provided with a series of openings and divided into non-communicating sections, each section being over one compartment of the trough, a pipe connecting each pump to one of the sections of the cleaning-pipes, a pipe conducting water to one compartment of the trough and means for heating the water, substantially as set forth.

9. An improved apparatus for cleaning and sterilizing milk-bottles, having an engine, a trough divided into compartments, a plurality of pumps operated from the engine, a pipe connecting each compartment to one of the pumps, two cleaning-pipes provided with a series of openings and divided into non-communicating sections, each section being over one compartment of the trough, a pipe connecting each pump to one of the sections of the cleaning-pipes, a pipe conducting water to one compartment of the trough, means for heating the water, and a coil of pipe in said compartment for additionally heating the water, substantially as set forth.

10. An improved apparatus for cleaning milk-bottles or the like, comprising a trough over which bottles are adapted to be passed in inverted position and divided into a plurality of compartments by transverse partitions which are provided with openings for the passage of water from compartment to compartment, a water-supply pipe connecting to one of the compartments, a water-pipe connecting to another compartment, a steam-pipe connecting to each compartment for heating the water, a steam-coil in one of the compartments, cleaning-pipes extending longitudinally of the trough and having jet-openings adapted to spurt water against the bottles, and pumps connected by piping to the compartments and the cleaning-pipes, substantially as set forth.

11. An improved apparatus for cleaning milk-bottles or the like, comprising a trough over which the bottles are adapted to be passed in inverted positions, a pipe in said trough having openings adapted to spurt water into said bottles as they pass, a pump connected to said pipe, and trough by piping, a water-supply pipe leading to the trough, a steam-coil in the trough for heating the water, and a steam-pipe connecting to the trough for preliminarily heating the water.

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No. 850,199. PATENTED APR. 16, 1907.

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APPARATUS FOR WASHING BOTTLES.

APPLICATION FILED JULY 20, 1903.

2 SHEETS—SHEET 1.

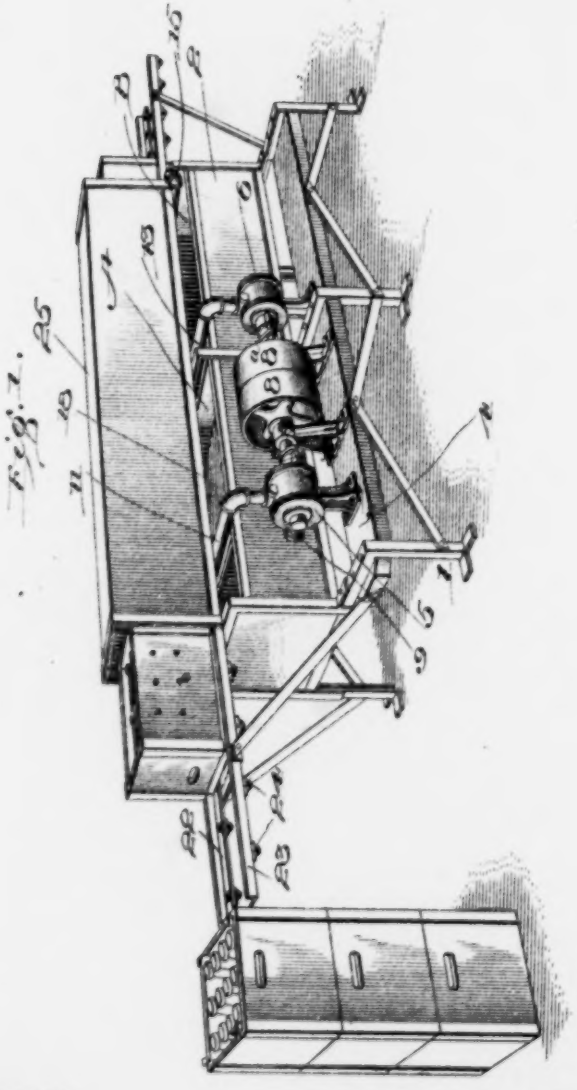

Fig. 1.

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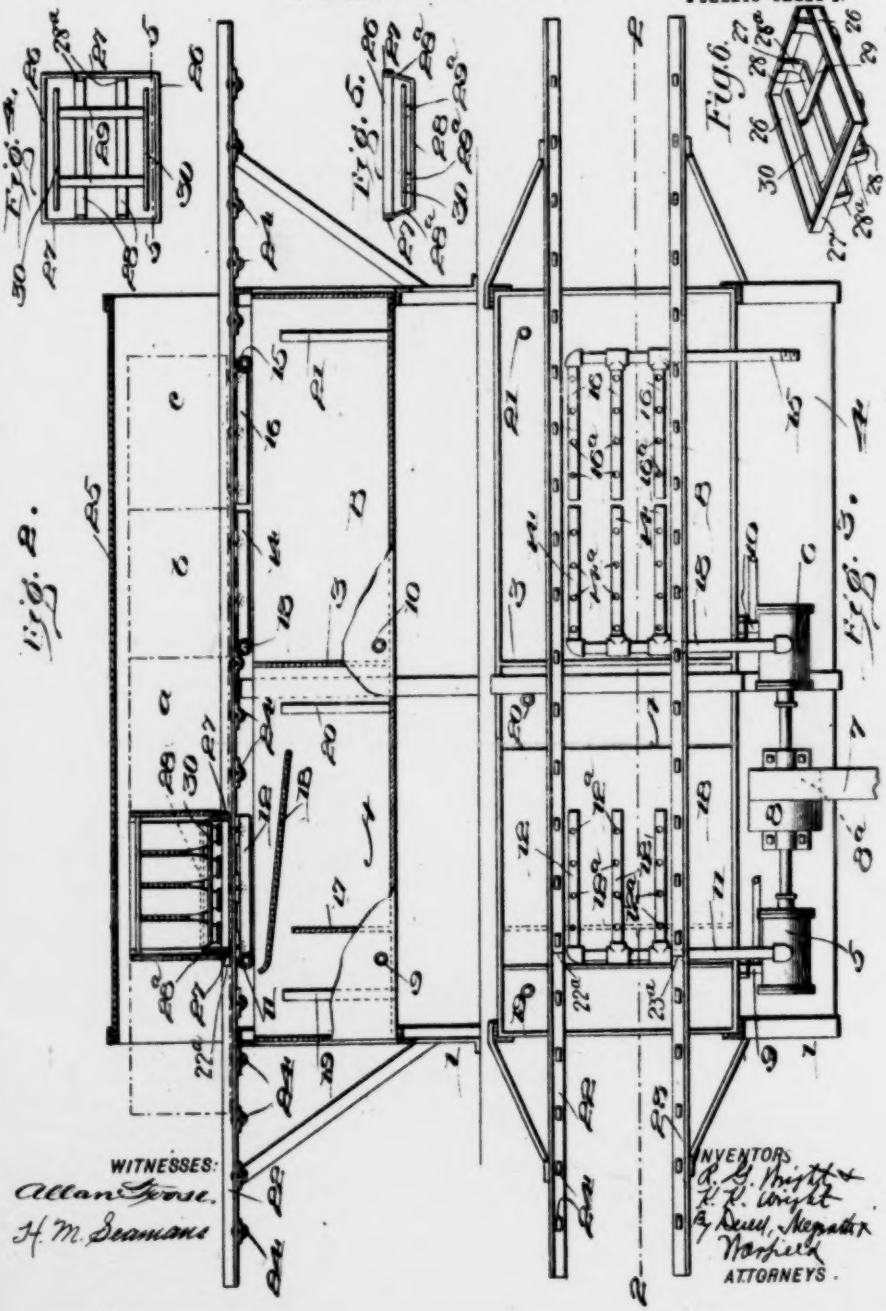
No. 850,199. PATENTED APR. 16, 1907.

R. G. & K. K. WRIGHT.

APPARATUS FOR WASHING BOTTLES.

APPLICATION FILED JULY 29, 1903.

2 SHEETS—SHEET 2.



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UNITED STATES PATENT OFFICE.

RALPH G. WRIGHT AND KIRK K. WRIGHT, OF BUFFALO, NEW YORK.

APPARATUS FOR WASHING BOTTLES.

No. 850,199. Specification of Letters Patent. Patented April 16, 1907.

Application filed July 28, 1903. Serial No. 167,261.

To all whom it may concern:

Be it known that we, RALPH G. WRIGHT and KIRK K. WRIGHT, residing at Buffalo, in the county of Erie and State of New York, have invented certain new and useful Improvements in Apparatus for Washing Bottles, of which the following is a full, clear, and exact description, such as will enable others skilled in the art to which it appertains to make and use the same.

Our invention relates to improvements in apparatus for washing bottles or other like receptacles.

The object of our invention is to provide an apparatus in which a bottle may be thoroughly washed and rinsed and dried and sterilized.

Other objects will appear from the hereinafter description.

In carrying out our object we produce an apparatus that is cheap and simple in construction, that operates effectively, and performs the work rapidly.

The nature of the invention will more fully appear from the following description, taken in connection with the accompanying drawings, which form a part of this specification.

Referring to the drawings, in which the same reference characters represent the same parts in the different views, Figure 1 is a perspective view of our apparatus. Fig. 2 is a longitudinal vertical section thereof through the middle of the apparatus, taken on the line 2 2 of Fig. 3. Fig. 3 is a plan view of the apparatus with the hood shown in Fig. 1 removed. Fig. 4 is a plan view of our improved frame for holding the bottles in the crate while the crate is passing through the apparatus with the bottles to be washed. Fig. 5 is a section of Fig. 4 on the line 5. Fig. 6 is a perspective view of the frame.

In all the drawings the part marked 1 represents the framework which supports the washing-tank 2. This tank is divided by a partition 3 into two compartments A and B.

4 is a shelf on which are supported rotary pumps 5 and 6, which are driven by means of a belt 7, passing over one of the two pulleys 8 and 8^a, one of these pulleys being an idler.

9 is an inlet-pipe leading from the compartment A of the tank to the pump 5, and 10 is another inlet-pipe leading from the compartment B to the pump 6.

11 is a discharge-pipe extending from the pump 5 into or over the compartment A. Connected to this pipe is a series of branch pipes 12, there being shown in this apparatus three of such pipes, and each of the pipes is provided with four openings 12^a in the upper side thereof through which water is forced into the bottles to be washed, these openings being so arranged or spaced that they will come directly under the mouth of the bottle when the crate carrying the bottles is properly placed in the machine. Leading from the pump 6 into the compartment B are similar pipes 13 and 14, said pipes being also provided with openings 14^a.

15 is another pipe leading into this compartment having branch pipes 16 connected thereto, with openings 16^a, similar to the pipes heretofore described. This pipe 15 is adapted to be connected to a source of live-steam supply.

17 is a partition-plate in the compartment A. Located over this partition-plate and directly under the pipes 12 is a plate or trough 18. Onto this plate 18 falls the water which comes out of the bottles while being washed. This plate is inclined, as shown in the drawings, to throw the water away from the partition 17. This arrangement is such that the dirt, &c., coming out of the bottles with the water will fall into that part of the compartment A to the right of the partition 17 and settle in said part, so that the water flowing over the top of the partition to that part of the compartment to the left will not carry any sediment with it, and therefore the sediment will be prevented from being drawn into the pump 5 through the inlet-pipe 9.

19, 20, and 21 are overflow-pipes removably connected to the bottom of the tank, so that they can be taken out to permit the water to run out of the bottom of the tank, so that the tank can be emptied and cleaned. Extending along the top of the tank and beyond each end thereof are two pieces of angle-iron 22 23, forming a track on which the cases containing the bottles to be washed are moved. This track is properly supported and secured to the tank, and the bottom flange of each angle-iron is provided with a series of rollers 24, on which the edges of the bottle-containing cases rest, so that the said cases may be more easily moved along the track.

25 is a hood fitted over the tank to deflect the water and steam forced through the openings 12^a, 14^a, and 16^a down into the compartments A and B when the bottles are not covering said openings.

In this apparatus the bottles may be washed without removing them from the wagon delivery crates or cases. As shown in this particular apparatus, each of the cases is adapted to hold twelve bottles and in the operation of washing these cases are turned upside down and moved along the track, so that the mouth of each bottle will come over each one of the openings 12^a, 14^a, or 16^a. To hold the bottles in the case when the case is inverted, we have provided a specially-constructed frame. (Shown in Figs. 2, 4, and 5.) This frame consists of two side pieces 26 and end pieces 27. The space between the two sides 26 is divided into three equal parts for the three rows of bottles held in the crates by the plates 28, which extend longitudinally, the ends being upturned, as shown at 28^a, and secured to the end pieces 27.

29 are cross-pieces secured to the pieces 28. The ends of these cross-pieces are upturned, as shown at 29^a, and have secured to the ends thereof the longitudinal rods 30. This frame is placed over the crate, with the ends and sides resting against the upper edge of the ends and sides of the crate, the rods 30 pressing against the outsides of the two outside rows of bottles in the crate to keep these rows from moving toward the sides of the crate when the crate is inverted. The plates 28 and 29 extending between the inner bottles of the crate hold them in position. When the crate is inverted, the edges of the side pieces 26 rest upon the rollers, and the frame securely holds the bottles in position in the crate.

The apparatus operates as follows: Each of the compartments A and B is filled, or partially filled, with water, either hot or cold. The first crate of bottles is placed upon the track and pushed along until the bottles come directly over the openings 12^a in the series of branch pipes 12, there being a mark or gage 22^a and 23^a on the track to indicate to the operator when the crate is over these openings. The pumps are started and water is drawn from the compartment A through the inlet-pipe 9 into the pump 5 and is forced through the pipe 11, branch pipes 12, and openings 12^a into the bottles, thoroughly cleansing them. The water from the bottles falls upon the plate 18 back into the compartment. The dirt and sediment is kept away from the inlet-pipe 9 by the plate 17, the sediment settling in that part of the compartment to the right of this plate. When the first set of bottles is washed, another crate is placed on the track and pushed along over the openings 12^a and the first crate is moved to the position *a*, where the bottles drain. When the second crate of bottles is washed, another is placed on the track and moved along to the first position *b*, the crate being shoved to the position directly over the openings 14^a, where the pump 6 forces the water through these openings into the bottles to rinse them, the water being drawn out of the compartment B and circulated through the inlet-pipe 10, pump 6, outlet-pipe 13, and branch pipes 14. When the third crate of bottles is washed, the fourth is put on the track and the prior crates moved along one step, the first crate being shoved over the opening 16^a to the position *c*, where steam is forced into the bottles to dry and thoroughly sterilize them. As the bottles are washed and sterilized the crates are moved along the track to the right, where they pass out from under the hood 25, when they are then removed and are ready to be filled.

While we have shown the inlet-pipes 9 and 10 of the pumps connected to the tank, so that the water contained in the tank may be circulated through the tank, we may, if desired, connect these inlet-pipes to an independent supply, so that the water may not be used over again, but fresh water will be continually supplied to the tank. When this is done, the excess of water will pass through the overflow-pipes 19, 20, and 21 or through some other suitable connection. The openings 12^a, 14^a, and 16^a may also be provided with small upwardly-projecting pipes or nipples.

While we have shown and described a certain apparatus for carrying out the object of our invention, it is to be distinctly understood, however, that we do not intend to confine ourselves to the exact construction, as various changes or modifications may be made within the scope of our invention without departing from the spirit thereof.

Having now fully described our invention, what we claim as new, and desire to secure by Letters Patent, is—

1. In an apparatus for washing and sterilizing bottles, a tank divided into compartments, means for supporting the bottles over the tank, a series of branch pipes in one compartment, means for forcing water through said pipes to wash the bottles, a series of pipes in another compartment, means for supplying water to these pipes to rinse the bottles, and means for supplying a drying and sterilizing medium to the bottles after they have been rinsed.

2. In an apparatus for washing and sterilizing bottles, a tank divided into compartments, a series of branch pipes in one compartment, means for forcing water through said pipes to wash the bottles, a series of pipes in the other compartment, means for supplying water to these pipes to rinse the bottles, and another series of pipes in this second compartment through which steam may be forced to dry and sterilize the bottles after being rinsed.

3. In a bottle washing and sterilizing apparatus, a tank divided into two compartments, a track adapted to support bottles to

be washed extending across the tank, a water-supply pipe extending into the first compartment, branches connected to this pipe having openings therein through which water may be forced, means for forcing the water through the openings for the purpose of washing the bottles, a pipe extending into the second compartment, branches connected to this pipe having openings therein through which water may be forced into the bottles, means for forcing the water into the pipes through the openings to rinse the bottles, another pipe extending into the second compartment, branches connected thereto having openings therein, said last-mentioned pipes adapted to have steam forced therein to dry and sterilize the bottles.

4. In a bottle-washing apparatus, a tank divided into compartments, a track extending longitudinally over the tank, a series of pipes having openings therein located in one compartment, means for forcing water through said pipes to wash the bottles, a trough located under said pipes, a partition in said compartment, a series of pipes in the second compartment having openings therein through which water is forced to rinse the bottles, means for forcing water through said openings, and another series of pipes having openings therein through which steam may be forced to dry and sterilize the bottles.

5. In an apparatus for washing bottles, a tank divided into compartments, pumps, an inlet-pipe leading from one pump to one compartment, branch pipes connected to said pipe having openings therein through which water may be forced to wash bottles, a trough or plate in the tank under said branch pipes, a partition under said trough, a return-pipe leading from said compartment to the pump, a pipe leading from another pump to another compartment, an outlet-pipe leading from this compartment to the pump, branch pipes connected to said first-mentioned pipe and having openings therein through which a rinsing medium may be supplied to the bottles, another pipe leading to the second compartment, a series of branches connected to this latter pipe, there being openings therein through which steam may be forced to dry and sterilize bottles after being rinsed, supporting means over the tank and adapted to support crates containing bottles to be washed and a hood over the tank and supporting means, as and for the purpose set forth.

6. In an apparatus for washing bottles, a frame, longitudinal strips connected to said frame at two ends thereof, cross-pieces connected to said strips, said frame adapted to be placed over crate containing bottles to engage the sides of the crate whereby the frame is held in place in the crate and the bottles are prevented from falling out of the crate when the crate is inverted.

7. In an apparatus for washing bottles, a frame, strips dividing the frame, said strips being connected to ends of the frames, cross-pieces connected to said strips and rods connected to the ends of the cross-pieces, said frame adapted to be placed over crate containing bottles to hold the bottles in place in the crate when crate is inverted.

In testimony whereof we affix our signatures in the presence of two witnesses.

RALPH G. WRIGHT.
KIRK K. WRIGHT.

Witnesses:
W. H. FAUST,
CLIFFORD HUBBELL.

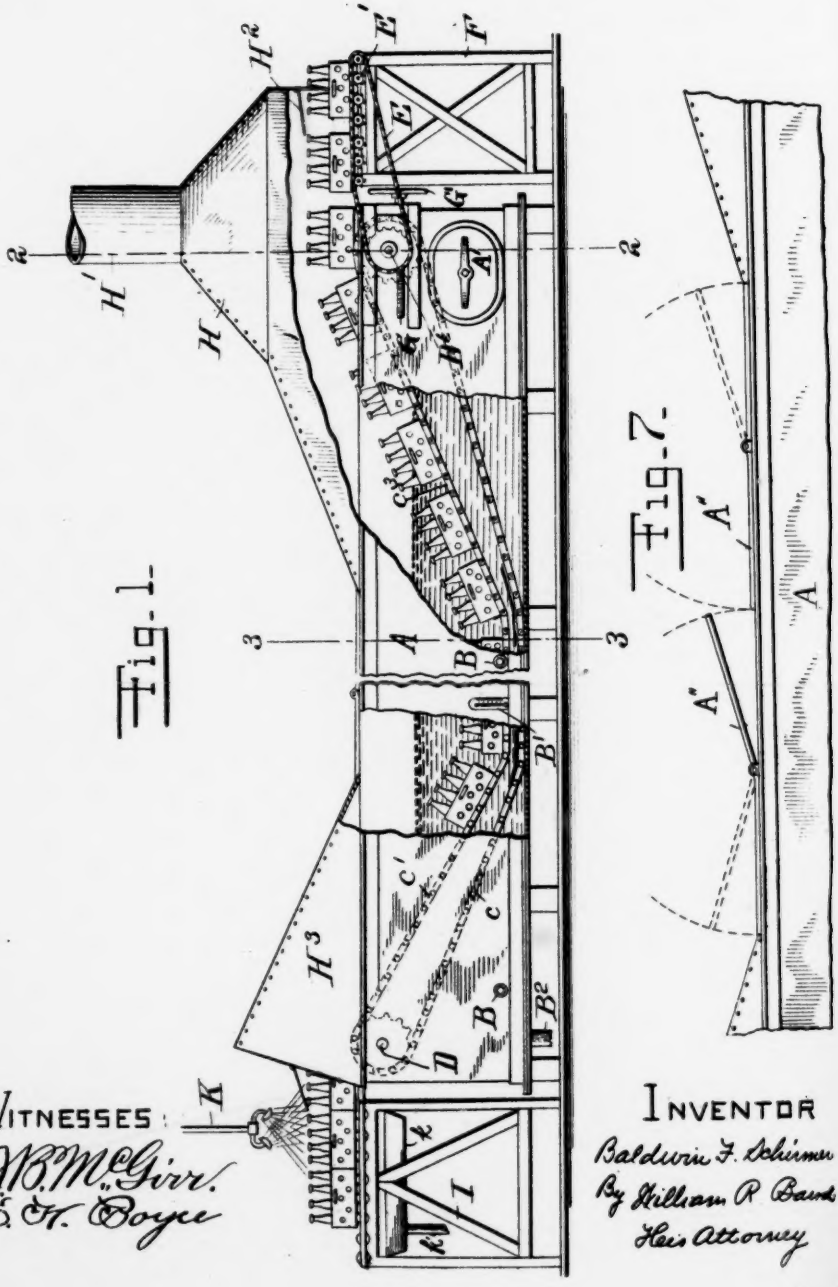
No. 708,738. Patented Sept. 9, 1902.

B. F. SCHIRMER.

PASTEURIZING APPARATUS.

(Application filed Mar. 4, 1902.)

(No Model.) 2 Sheets—Sheet 1.



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668

No. 708,738. Patented Sept. 9, 1902.

B. F. SCHIRMER.

PASTEURIZING APPARATUS.

(Application filed Mar. 4, 1902.)

(No Model.) 2 Sheets--Sheet 2

Fig. 2.

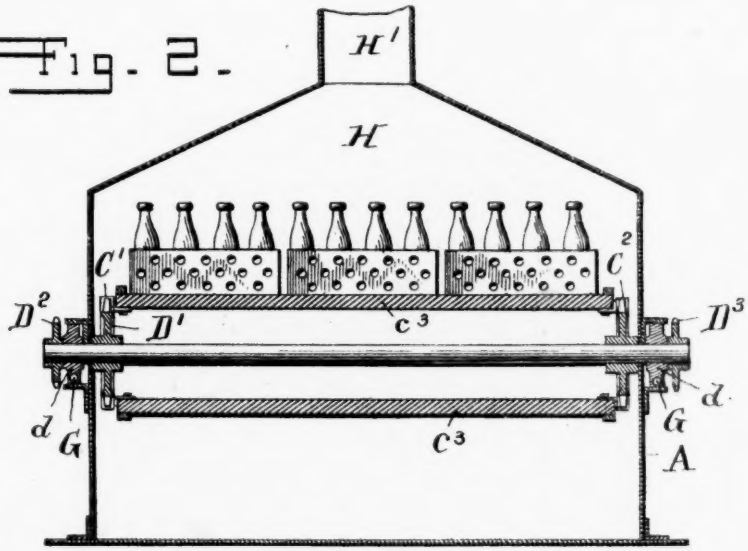


Fig. 3.

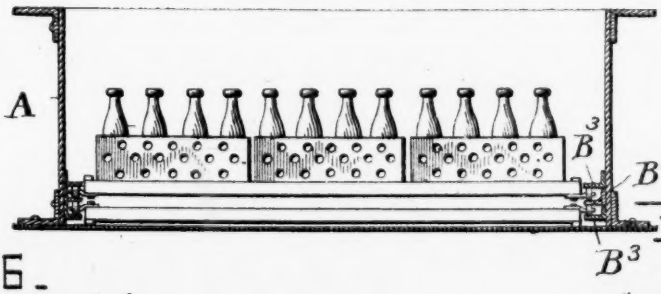
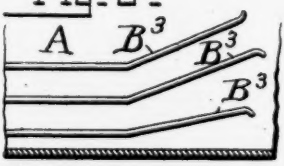
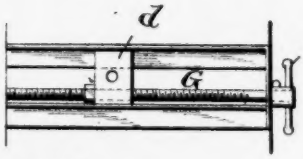


Fig. 5.

Fig. 6.





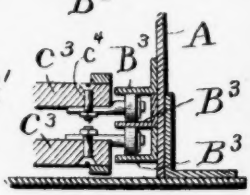


Fig. 4.

Witnesses

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E. H. Boyce.

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By William R. Baird

His Attorney

UNITED STATES PATENT OFFICE.

BALDWIN F. SCHIRMER, OF INDIANAPOLIS, INDIANA.

PASTEURIZING APPARATUS.

SPECIFICATION forming part of Letters Patent No. 708,738, dated September 9, 1902.

Application filed March 4, 1902. Serial No. 96,598. (No model.)

To all whom it may concern:

Be it known that I, BALDWIN F. SCHIRMER, a citizen of the United States, residing at Indianapolis, in the county of Marion and State of Indiana, have invented a certain new and useful Improvement in Pasteurizing Apparatus, of which the following is a specification.

My invention relates to that form of pasteurizing apparatuses in which an endless carrier is employed to cause the articles to be pasteurized to move into, through, and out of a liquid which has been heated to the proper degree in order to secure the destruction of the germs which it is the purpose of the heat to kill.

The novelty of my apparatus consists in the construction and adaptation of the parts, as will be more specifically pointed out in the claims.

In the drawings, Figure 1 is a side elevation and a partial section of my apparatus, portions being cut away to show concealed parts. Fig. 2 is a vertical section on the plane of line 2 2 in Fig. 1. Fig. 3 is a similar section on the plane of the line 3 3 in Fig. 1. Fig. 4 is a detail of the take-up apparatus of the main carrier-chain, showing the means of moving longitudinally the sprocket-wheel bearings. Fig. 5 is an enlarged sectional detail of the guides for the carrier, and Fig. 6 is a side elevation thereof. Fig. 7 is a side elevation of the upper middle portion of the tank, showing the doors which close it at the top.

In the drawings, A is a fluid-tank made of any suitable material, oblong in shape and provided near one end with a door A′ to admit of access to its interior and on top with doors A″ A″, opening upward and arranged to swing on hinges or pintles in the usual manner. It is also provided with means for heating its interior and any fluids which may be contained therein, consisting of transverse pipes, as B, connected with a source of steam-supply. (Not shown.) Thermometers B′ are mounted along its sides to enable the temperature within to be ascertained from the outside, and means for drainage, such as the pipe B^2, are provided at proper places. An endless carrier and means for propelling the same are mounted within the tank. The carrier C consists of two parallel chains C′ and C^2, each consisting of links *c* and rollers *c*′, secured together in the usual way. Placed transversely between the chains are slats or plates c^3, secured to the links in any suitable manner—for instance, by screws c^4. Near the discharge end of the tank sprocket-wheels D (one only being shown) are mounted near the opposite ends of a shaft driven from a source of power (not shown) and mounted in suitable bearings in the side of the tank, which wheels engage with the carrier-chains and propel them through the tank. Near the inlet end of the tank there is similarly mounted in bearings *d* a second shaft carrying sprocket-wheels D′ D′, Fig. 2, which also engage with the carrier-chains. The wheels D′ may be idlers rotated by the motion of the carrier C or may be driven to assist in propelling the carrier, if deemed desirable. In the latter case their shaft would be connected with a source of power (not shown) by a belt or similar mechanism. The shaft of the wheels D′ extends beyond the side of the tank A, and carried by it at its ends are two other sprocket-wheels D^2 and D^3, which drive a supplemental carrier E, consisting of a series of rollers E′, mounted in bearings placed on a table or platform F, arranged alongside of the tank A, the rollers being provided with sprockets adapted to engage with one or two chains which are actuated by the wheels D^2 and D^3. The wheels E′, &c., are placed about on a level or a little above the level of the carrier C at its highest point.

The bearings *d* for the wheel D′ are adjustable longitudinally of the tank A, a screw G passing through the frame on which they are mounted and operated by a hand-wheel G′, serving to move them forward or backward, and thus take up the slack, if any, in the main carrier C.

It will be observed that the wheels D and D′ are each mounted within the tank A at its opposite ends and near the top of the same.

It is my purpose to propel the carrier through the tank close to the bottom. I therefore provide the tank with guides consisting of strips of angle-iron B^3, with the under surface of which the rollers come into contact and are thereby kept near the bottom in passing through the tank.

A hood H is secured to and above the tank and extends over a part of the table or plat-

form F. It is made of sheet-iron or other suitable material and terminates upward in a chimney H'. It is also provided with an opening to admit of the entrance of the bottle-holding receptacles. This opening is closed by an automatic door H^2, opening inward, of common construction, so that the steam or hot air within the tank does not readily escape into the outer air. At the discharge end of the tank is a similar hood H^3 without a chimney and a similar automatically-closing door.

Alongside of the discharge end of the tank is placed a table or platform I, provided on its upper surface with rollers I' I' in a position slightly lower than the highest position of the carrier C at that end. As the carrier C moves upward the boxes holding the bottles are carried to the highest point, and then as the carrier turns to move downward around the sprocket-wheel D the boxes are pushed over onto the rollers I' I', where they are removed by the operator as they pass through the door of the hood H^3. A cooling device consisting of one or more rose-spouts at the end of a pipe K, connected with a source of water-supply whereby a fine spray of cold water is showered upon the bottles, is arranged above the platform. A drip-pan *k* and drainage-pipe K' are arranged beneath the platform. The bottle-holding receptacles are boxes with perforated sides or baskets made of steel wire or other suitable material.

The operation of my apparatus is as follows: The tank A is filled more than half full with water and the upper doors A'' A'', &c., are closed. The steam is turned on and the water thereby heated to the desired temperature, which can be ascertained from the thermometers B'. By means of chimney H^2 a draft toward the inlet end of the tank is created. Power is then applied to the shaft of sprocket-wheels D D and, if necessary or desired, to that of sprocket-wheels D' D'. This causes the propulsion of the carrier C through the tank. It is made to move very slowly. The filled bottles to be pasteurized having been already placed in the proper receptacles are then placed upon the supplementary carrier E. This causes them to move forward and drop upon the slats of the main carrier C. They then move downward, passing under the hood H and becoming heated as they slowly go through the current of steam and vapor which is drawn into the chimney. As the carrier continues its forward and downward course the bottle-holders and bottles gradually pass into the hot water, and so onward until they reach the intended level near the bottom of the tank. They then pass on through the water until the point is reached where the carrier is deflected upward. Continuing they gradually emerge from the water and thence to the highest point above the sprocket-wheel D. At this point the boxes drop upon the rollers I' I' upon the platform, one box pushing the other over the series of rollers and out through the door, which closes behind them, the operator removing the boxes as they are discharged. The cool water assists in lowering the temperature of the bottles, so that they can be handled without injury.

By means of this apparatus the bottles are first heated in the vapor above the water before they reach the liquid, the chimney in the hood creating a current in the direction of the inlet. The danger of cracking the bottles by a sudden change in temperature is thus in part avoided, and as a further precaution the immersion of the bottles in the liquid takes place slowly. The bottles are also gradually cooled as they emerge from the fluid. The apparatus is simple, economical, and little likely to get out of order.

Having thus fully described my invention, what I claim as new, and desire to secure by Letters Patent of the United States, is—

1. In a pasteurizing apparatus, the combination with a fluid-tank having inlet and outlet openings at opposite ends, of means for heating the tank, a normally closed door at each opening, an endless carrier in the tank, a supplementary carrier connected therewith, means for propelling the supplementary carrier through the inlet-opening, bottle-holders on the supplementary carrier for opening the inlet-door, and means for receiving the bottle from the main carrier at the outlet-door.

2. In a pasteurizing apparatus the combination with a fluid-tank having inlet and outlet openings at opposite ends, normally closed doors at said openings, an endless carrier in the tank, a shaft and sprocket-wheels at the inlet end for supporting and driving said carrier, a supplementary carrier mounted at its inner end on said shaft and extending through the inlet-opening, means for adjusting the shaft to take up slack, and bottle-holding receptacles carried by the supplementary carrier and serving to open the normally closed inlet-door.

3. In a pasteurizing apparatus, the combination with a normally closed fluid-tank, a main endless carrier, means for propelling it through the tank, inwardly-projecting side flanges on the side of the tank engaging the carrier and deflecting it downward from the inlet end to the center of the tank and upward from the center to the outlet end, a supplementary carrier mounted upon and driven by the shaft at the inlet end of the main carrier, bottle-holders on the supplementary carrier serving to open the inlet of the tank, a receiving roller-carrier outside the outlet of the tank, and means for projecting the bottle-holders on the main carrier through the outlet and upon the receiving roller-carrier.

4. In a pasteurizing apparatus, the combination with a fluid-tank, of a transverse shaft at each end near the outlet and inlet respectively and near the top of the tank, sprocket-wheels on said shafts, an endless carrier engaging said sprocket-wheels, horizontal flanges projecting inwardly from the sides of the tank

at its mid-length and near the bottom, said flanges being parallel with the bottom of the tank for some distance and provided with upwardly-inclined ends, and rollers at the sides of the carrier engaging between and guided by said flanges.

Witness my hand this 15th day of February, 1902, in the presence of two subscribing witnesses.

BALDWIN F. SCHIRMER.

Witnesses:
CHARLES H. LOEW,
WILLIAM R. BAIRD.

No. 639,378. Patented Dec. 19, 1899.

C. GROTERJAN.

BOTTLE WASHING APPARATUS.

(Application filed June 7, 1898.)

(No Model.) 3 Sheets—Sheet 1.

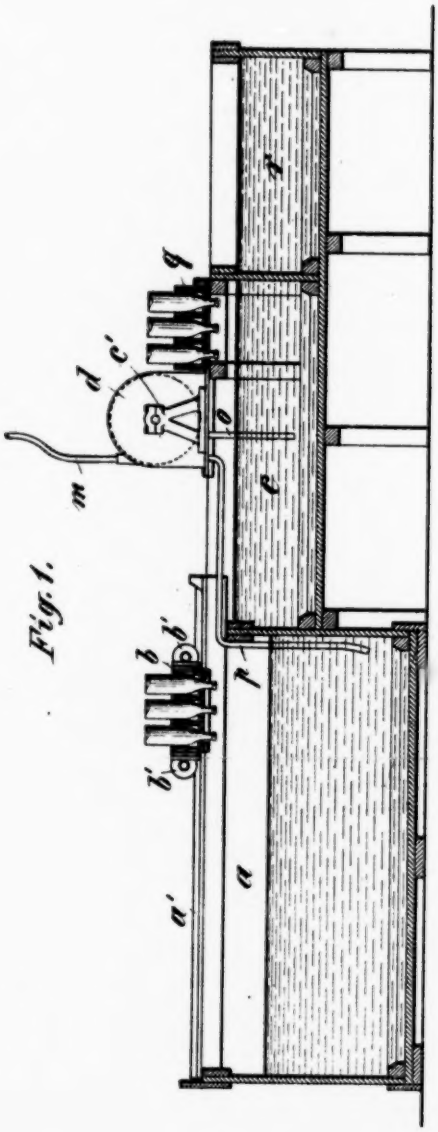


Fig. 1.

WITNESSES:
P. W. Wright
S. C. Comer

INVENTOR
CHRISTOPH GROTERJAN
BY Howson and Howson
HIS ATTORNEYS.

676

No. 639,378. Patented Dec. 19, 1899.

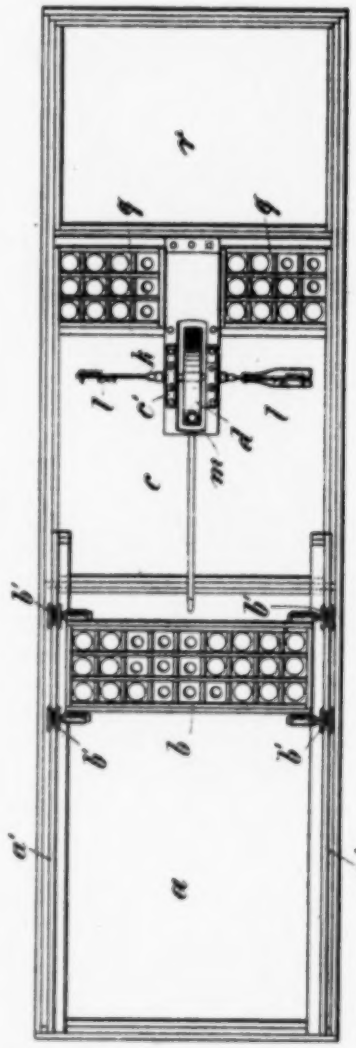
C. GROTERJAN.

BOTTLE WASHING APPARATUS.

(Application filed June 7, 1898.)

(No Model.) 3 Sheets—Sheet 2

Fig. 2.



WITNESSES:
P. W. Wright
L. C. Connor

INVENTOR
CHRISTOPH GROTERJAN
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HIS ATTORNEYS.

6778

No. 639,378. Patented Dec. 19, 1899.

C. GROTERJAN.

BOTTLE WASHING APPARATUS.

(Application filed June 7, 1898.)

(No Model.) 3 Sheets—Sheet 3

Fig. 3.

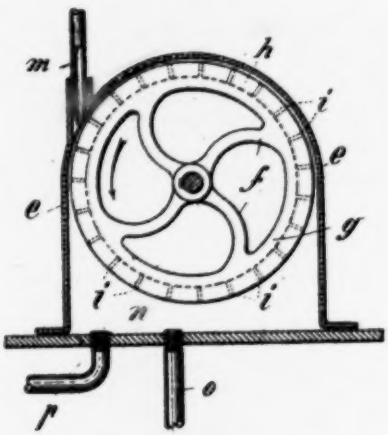
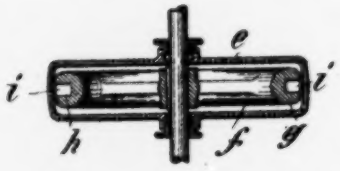


Fig. 4.



WITNESSES:

F. W. Wright

L. C. Grinnell

INVENTOR

CHRISTOPH GROTERJAN

BY Howson and Howson

HIS ATTORNEYS

UNITED STATES PATENT OFFICE.

CHRISTOPH GROTERJAN, OF BERLIN, GERMANY.

BOTTLE-WASHING APPARATUS.

SPECIFICATION forming part of Letters Patent No. 639,378, dated December 19, 1899.

Application filed June 7, 1898. Serial No. 682,821. (No model.)

To all whom it may concern:

Be it known that I, CHRISTOPH GROTERJAN, of Berlin, Germany, have invented certain new and useful Improvements in Bottle-Washing Apparatus; and I declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

My invention relates to an apparatus for cleansing bottles having a considerably-increased output and effecting a very considerable saving in working expenses as against the bottle-washing apparatus hitherto employed. In addition to the practical general arrangement of the apparatus this is mainly attained by the brushes employed as the means for cleaning the interior of the bottles, being adapted to utilize directly the propulsive power of steam issuing from a nozzle and the same steam being directly utilized for warming the washing-water.

An apparatus for bottle-washing arranged according to this invention is shown in the accompanying drawings, in which—

Figure 1 is a vertical longitudinal section of the whole apparatus; Fig. 2, a plan view of same; and Figs. 3 and 4, vertical and horizontal sections, respectively, of the motor operated directly by steam, with the axle of which motor two brushes are directly connected.

The apparatus consists of the dipping-tank *a*, which is filled with water up to a certain height and in which the bottles are first placed for a certain time in order that the impurities adhering thereto may be softened and also partially removed. On the upper edge of the longitudinal walls of this tank bars or rails *a'* are fixed, and on these a drip or drain frame *b*, mounted on four wheels *b'*, is movably arranged. The bottles, with their necks downward, are inserted in the holes of this frame, and after the bottles have been drained the draining-frame *b*, together with the bottles, is pushed to the right-hand end of the rails *a'*. The bottles then come into a comparatively shallow tank or vessel *e*, arranged at this end, where they are again partially filled with water. Above the tank *e* a brushing apparatus *d* is mounted in a bracket-like support or carrier *c'*. This brushing apparatus consists of a wheel *f*, revolubly mounted in a casing *e*, the rim *g* of said wheel being made comparatively heavy in order that the wheel may have a considerable momentum. The wheel has a groove *h* running all around it, which is provided with vanes by means of radial bars *i*. A brush *l* is connected with each end of the axle of the wheel *f*, which axle projects through the casing *e* at each end, the connection being effected by means of a socket *k*. A nozzle *m* opens into the casing *e*, which nozzle is connected with any suitable steam-supply—such, for instance, as a steam-boiler or a steam-supply pipe. The nozzle is so arranged that the steam emerges therefrom with the expansive force of the vane *i*, situated immediately below it. By the force of the steam the wheel *f* and also the two brushes *l* are set in rotation, which, owing to the circumstance that each successive vane *i* receives an impulse, very soon produces an extremely-rapid revolution of the wheel *f* with the brushes *l*. The steam flowing into each separate compartment of the rim of the wheel is on the rotation of the wheel of course carried with it. The lower part of the casing *e* is widened out or expanded in such a way that a free space *n* results, in which the steam carried along in the compartments of the wheel-rim is ejected by centrifugal force. A pipe *o* runs downward from this space *n*, and the lower end of said pipe dips in the water of the tank *e*. A second pipe *p*, also running from the space *n*, opens into the water of the tank *a*. As the tanks *a* and *e* at first and also later on (on the renewal of the water) are always again filled with cold water a powerful condensation of course takes place of the steam passing from the chamber *n* into the pipes *o* and *p*, and in consequence of this condensation there very soon takes place in the water contained in the said two tanks such a heating as is necessary for the rapid softening and washing out of the impurities contained in and on the bottles. A workman stands at each side of the tank *e* and removes the bottles from the tank and places them over the rapidly-rotating brushes *l*, arranged at each side, so that the interior of the bottles is thoroughly cleansed. The workman places the brushed-out bottles, which still contain some water, into a second drip-frame *q* adjoining him, from which the bottles may

be removed again by another workman and finally washed in a third tank *c*, containing pure water.

The steam consumption of the brush-motor is a very small one, and steam having a pressure of one to one and one-half atmospheres suffices.

By using the double brushing apparatus hereinbefore described about two thousand bottles may be cleansed per hour. For this four workmen are employed at each side of the washing apparatus, so that in all eight workmen are necessary.

I claim as my invention—

Apparatus for washing bottles having washing-tanks, a vaned motor-wheel, brushes secured to the shaft of the wheel, a casing surrounding the motor-wheel, having a widened chamber part, a steam-inlet pipe to admit steam to the motor-wheel and pipes connected to the widened chamber part of the casing to deliver the steam to the washing-tank thereby heating the water and revolving the brushes from the same steam-supply, as set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

CHRISTOPH GROTERJAN.

Witnesses:

C. H. DAY,

EMIL T. HOFFMANN.

682

(No Model.)

J. B. GIBBS.
Dish Washer.

No. 240,404. Patented April 19, 1881.

Fig. 1.

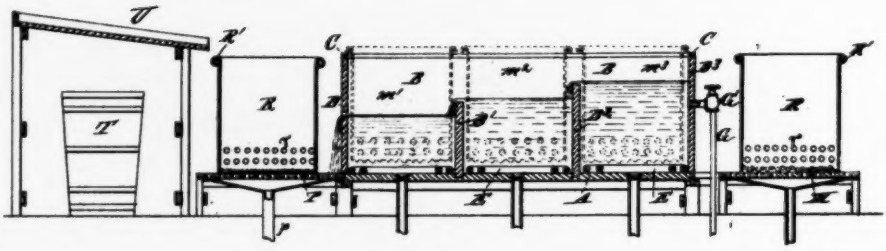
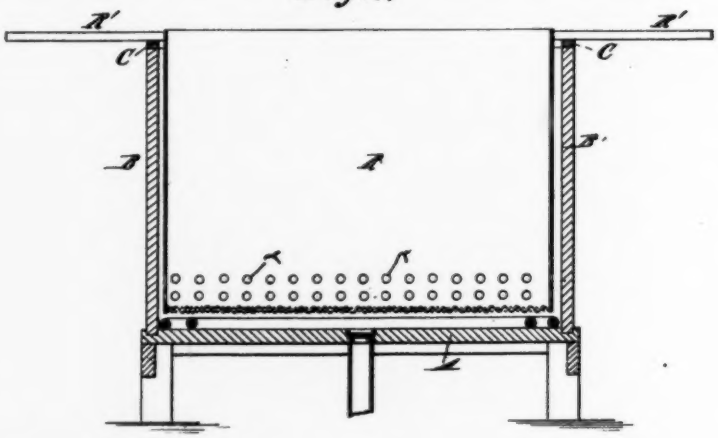


Fig. 2.



WITNESSES—
W. Colborne Brookes
Charles C. Stetson

INVENTOR—
John B. Gibbs
by his attorney
C. C. Stetson

UNITED STATES PATENT OFFICE.

JOHN B. GIBBS, OF NEW YORK, N. Y.

DISH-WASHER.

SPECIFICATION forming part of Letters Patent No. 240,404, dated April 19, 1881.

Application filed April 21, 1880. (No model.)

To all whom it may concern:

Be it known that I, JOHN B. GIBBS, of New York city, in the State of New York, a citizen of the United States, have invented certain new and useful Improvements relating to Dish Washing, of which the following is a specification.

The invention is intended more especially for use in large hotels and dining-saloons, where the same dishes are used many times in succession, and it is required that they be rapidly, as well as thoroughly, washed, rinsed, and dried in the brief intervals. The invention may be of some service in any situation where any considerable number of dishes or analogous articles of equal or unequal size and form require to be washed.

I provide a succession of tanks, side by side, of convenient size, with provisions for heating them by steam-pipes, or otherwise, to attain and keep the required high temperature, and a number of somewhat smaller portable vessels with convenient handles and open-work bottoms, in which the dishes are skillfully placed, and are by little labor immersed successively in the entire series. The first contains water which has been several times before used and is only fit to remove the heaviest dirt. The last is very clean, and serves as a perfect rinsing. The level of the several tanks is so adjusted that the water flows of itself from the last tank into the one preceding, and so on in the direction opposite to that in which the vessel carrying the dishes is shifted. The last tank—the clean one—or the one next to it, which is but slightly dirty, is supplied with a quantity of washing-soda, (carbonate of soda,) preferably in a large lump, which will dissolve slowly and give a just sufficiently alkaline character to the water in the tank or tanks below.

The vessels in which the dishes are transferred from one tank to another and exposed in each to a succession of vigorous immersions and removals are, as before suggested, equipped with handles, which extend out horizontally beyond each side of the several tanks, to allow their being conveniently operated, one man or woman standing each side of the series of tanks and successively operating each vessel in each tank and transferring it from the filling-place just beyond the series or side to the emptying-place at the other extreme of the series. The tanks are all deeper than the vessels are allowed to sink. They are arrested, not by striking the bottom of each tank, for a sediment of solid, or partly solid, matter may gather at the bottom, but at the top rim. The top of the rim of each is equipped with a rubber fender, which receives the handles gently, and avoids shock when, as is often the case, the vessel is plunged down so rapidly as to strike the handles forcibly thereon. The bottoms of the carrying-vessels are of wire-netting very open to the motion of the water. Yet, as the dishes are liable to be spread quite horizontally over a large part of the bottom, the motion up and down through the water induces very vigorous movement of the water through small openings (auger-holes) in the sides of the vessel. These holes are provided thickly near the bottom, and the dishes being piled as open as may be to allow the access of the water to all the surfaces, a few lifts and lowers in each tank effects a thorough washing.

The accompanying drawings form a part of this specification, and represent what I consider the best means of carrying out the invention.

Figure 1 is a vertical section through a series of three tanks, with a filling-stand at one end and a draining-place at the other. This figure also shows a table on which the dishes are received, and on which the largest portion of their solid contents is removed, by a spoon or the like, and dropped into the tub below, as an ordinary preliminary operation. Fig. 2 is a transverse section through one of the tanks, on a larger scale, with the carrying-vessel in it resting by its handles on the elastic seats provided at the rim.

Similar letters of reference indicate like parts in all the figures.

A is a strong and tight bottom, and B B are high and tight sides bounding the whole series of tanks. I have shown only three tanks, (marked, successively, $m' m^2 m^3$.) The partitions separating them are of graduated heights, as indicated by D D' D^2 D^3. The first, D, may have a piece above it, as shown. So, also, may all the others; but it is important to allow all

the water which will ever be required to escape to flow freely over each partition. The partition D^2 is higher than D', and so with the number succeeding.

E is a series of steam-pipes arranged in coils or otherwise in the bottom of each tank, with connections of the ordinary character for heating with steam from a boiler. (Not shown.)

G is a pipe bringing hot water from a boiler, (not shown,) controlled by a valve, G'. It admits the clean water in the last (the highest) tank. Each tank flows over when the carrying-vessel and its load of dishes is immersed, flows over into the next lower one, and thus transfers the water from m^3 to m^2, from m^2 to m', and from m' overboard into a grated sink, P, from whence it escapes through a drain-pipe, *p*.

R R are the bodies, and R' the handles, of the carrying-vessels. I have not shown the dishes. It will be understood that care shall be expended to pile them in open tiers, so that the water, in washing strongly up and down in the vessel, and also entering in strong jets through the auger-holes *r*, shall have a fair action on the entire lot of dishes.

T is a removable tub, and U a slightly-inclined table.

H is a draining-grate, with connections for allowing the hot, wet dishes to part with the clean water brought over from the last tank, m^3. The dishes are removed from this, after draining a little time, in so dry a condition that they can be immediately used again without wiping.

The elastic rests are formed by short pieces or considerable lengths of rubber, as convenience may dictate. They are marked C, and appear in Fig. 1 as a continuous strip of rubber extending the whole length of the series of tanks. The screws or other fastenings (not shown) should be so disposed as to avoid the contact of the handles R'. They support the vessels R and their fragile contents gently, and avoid shocks, even if the dishes are raised and lowered very vigorously.

The tanks m' m^2, &c., being of the same form as the carrying-vessels R, act to some extent piston-wise in compelling a strong motion of the water through the mass of dishes; but I do not confine the invention to the close adaption of the form and size as shown.

Modifications may be made in the forms and proportions by any good mechanic without departing from the principle or sacrificing the advantages of the invention.

The number of tanks may be increased up to ten in succession, or any other number. If reduced to two, it may be successfully used in some places.

I have made the carrying-vessels R of galvanized sheet metal, and prefer such for general practice; but they may be made of wood, and I have so described them.

The drain-pipes for finally emptying each tank may be provided with stop-cocks instead of plain plugs, as shown, or may be omitted altogether, and the tanks emptied by other means. Especially more depth may be provided below the wire-work bottoms of the several carrying-vessels. It may be of advantage to allow such in most cases.

I claim as my invention—

1. The series of tanks m' m^2 m^3, arranged to overflow from each into the next, in combination with the dish holding or carrying vessels R R' *r*, and with means, substantially as described, for supplying the uppermost and draining the lowermost, as herein specified.

2. The vessels R R' *r*, formed with wire-work bottoms and close sides, except for the holes *r* near the bottom, in combination with tanks m' m^2, of corresponding form and slightly larger size, and with means, substantially as described, for supplying water from one to another, and for heating the whole, as herein set forth.

In testimony whereof I have hereunto set my hand at New York city, New York.

J. B. GIBBS.

Witnesses:
GEO. HAZELTINE,
GEORGETTE B. GIBBS.

(No Model.) 4 Sheets—Sheet 1.

O. O. HODGDON.

DISH CLEANER.

No. 498,549. Patented May 30, 1893.

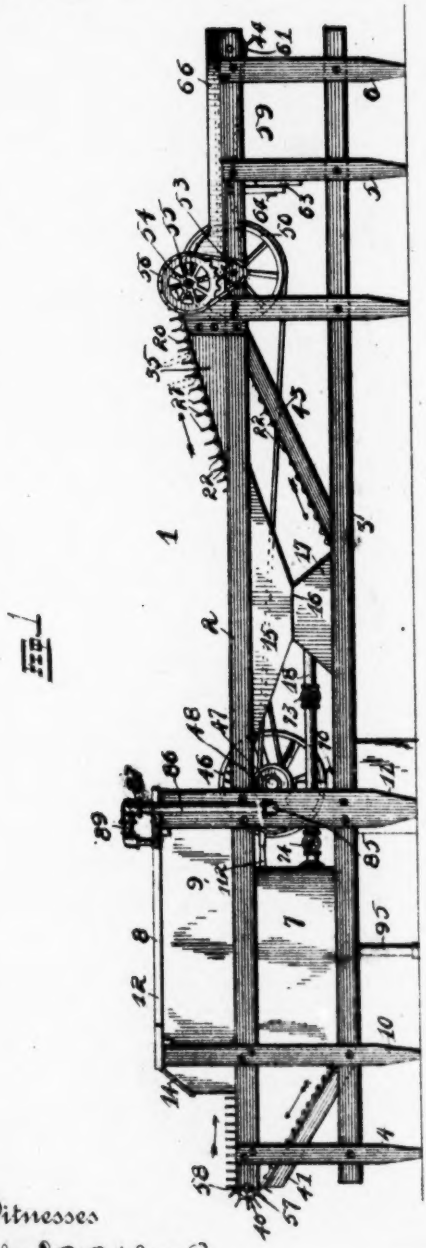


Fig. 1.

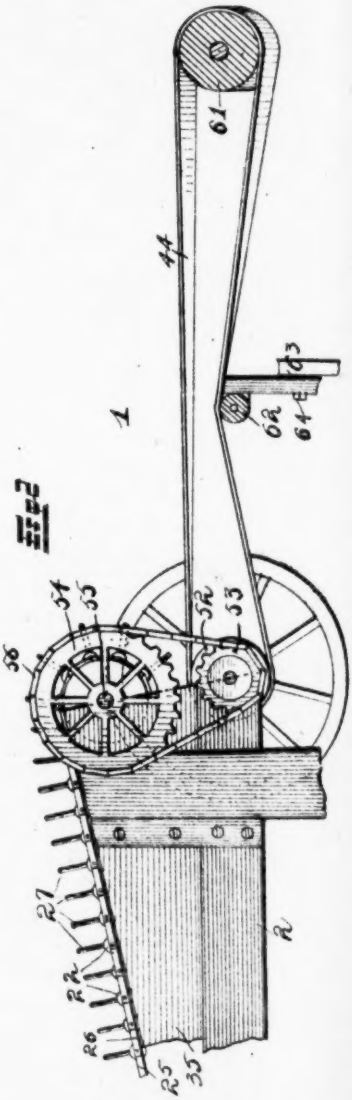


Fig. 2.

Witnesses
Alfred A. Eicks
Herbert A. Robinson

Inventor
Oscar O. Hodgdon
By his Attorneys
Higdon & Higdon & Longan

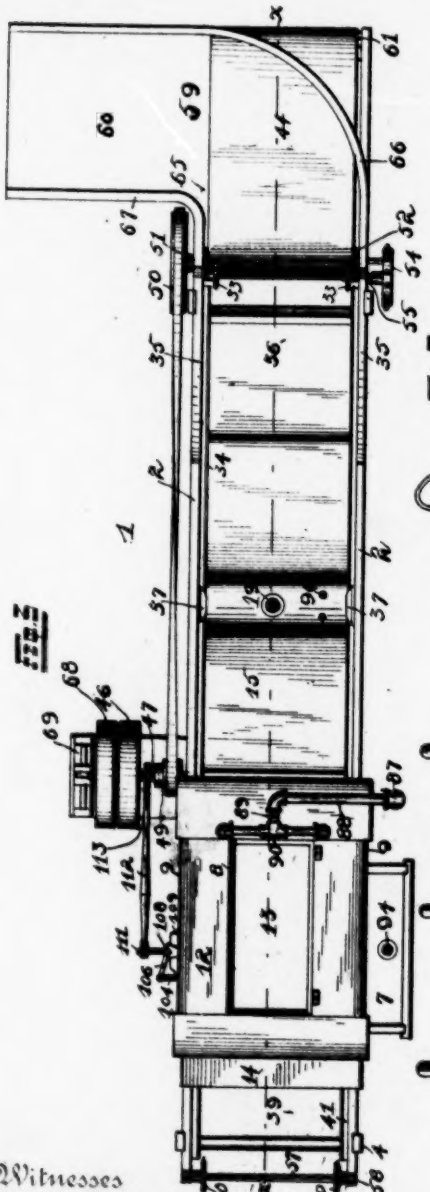
688

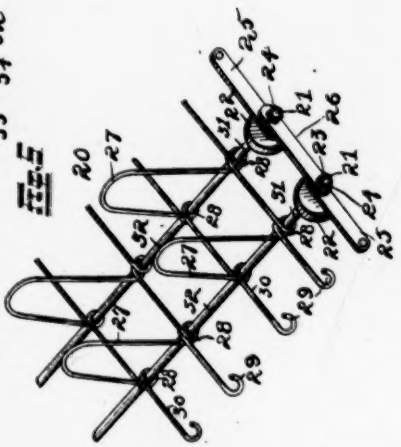
(No Model.) 4 Sheets—Sheet 2.

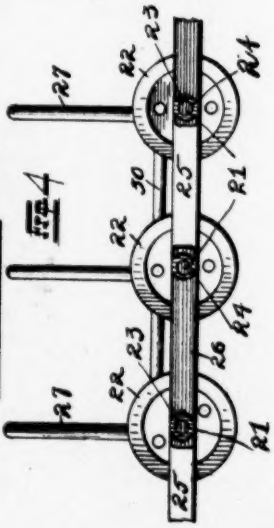
O. O. HODGDON.

DISH CLEANER.

No. 498,549. Patented May 30, 1893.







Witnesses
Alfred A. Eicks
Herbert S. Robinson.

Inventor
Oscar O. Hodgdon
By his Attorney
Higdon & Higdon & Longan.

(No Model.) 4 Sheets—Sheet 3.

O. O. HODGDON

DISH CLEANER.

No. 498,549. Patented May 30, 1893.

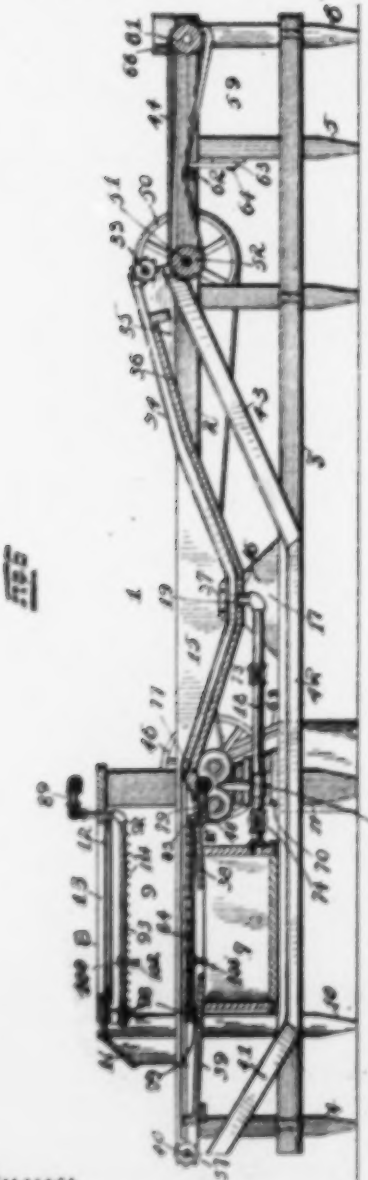


Fig. 3.

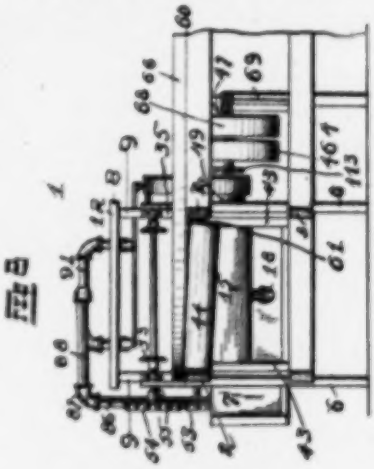


Fig. 2.

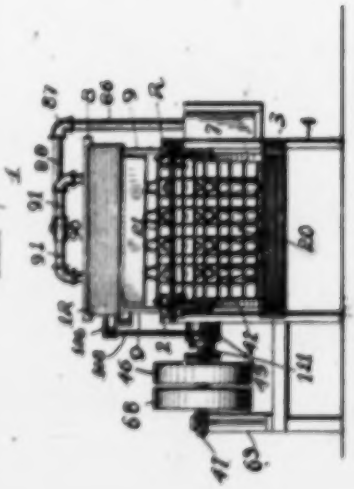


Fig. 4.

Witnesses
Alfred D. Kirby
Herbert J. Robinson.

Inventor
Oscar O. Hodgdon
By his Attorneys
Higdon & Higdon & Longan.

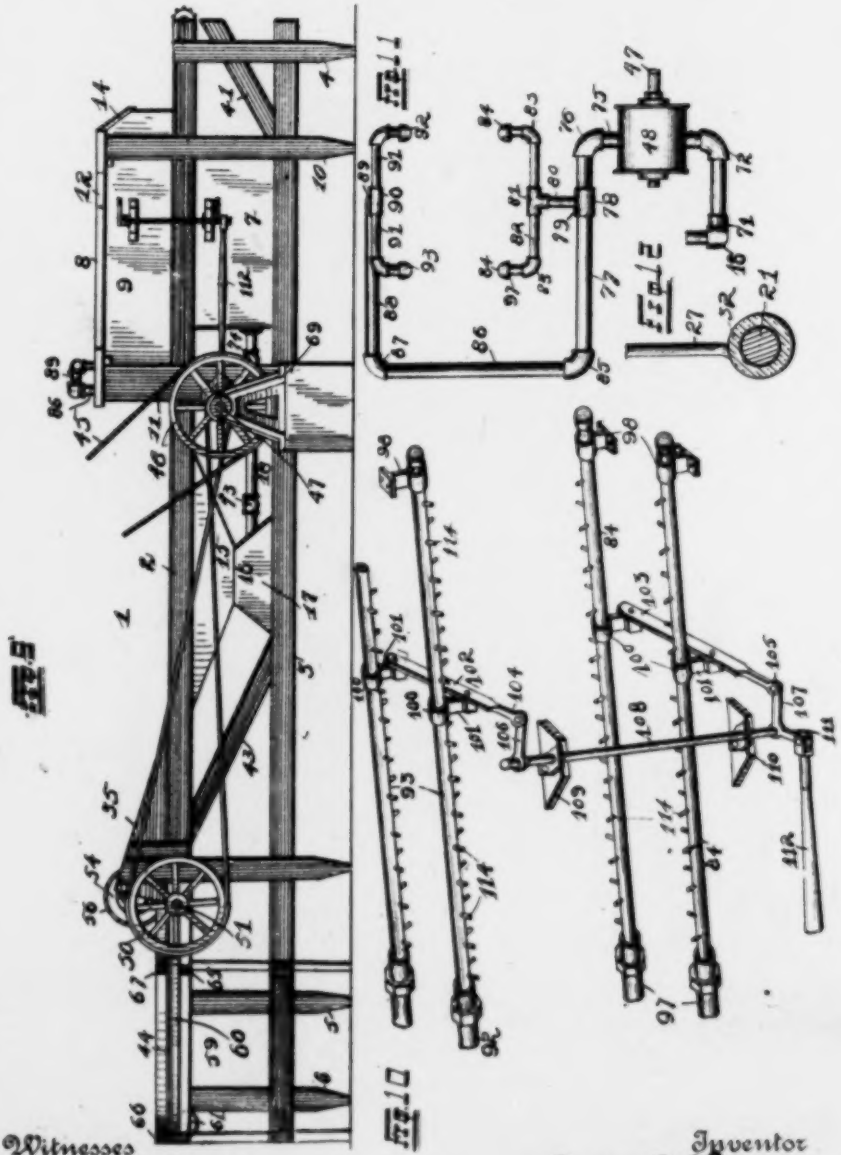
692

(No Model.) 4 Sheets—Sheet 4.

O. O. HODGDON.

DISH CLEANER.

No. 498,549. Patented May 30, 1893.



Witnesses
Alfred A. Fisher
Herbert A. Robinson

Inventor
Oscar O. Hodgdon
By his Attorneys
Hyde & Hyde & Langau

UNITED STATES PATENT OFFICE.

OSCAR O. HODGDON, OF ST. LOUIS, MISSOURI, ASSIGNOR OF ONE-HALF TO HENRY H. DARBY, OF SAME PLACE.

DISH-CLEANER.

SPECIFICATION forming part of Letters Patent No. 498,549, dated May 30, 1893.

Application filed July 20, 1892. Serial No. 441,693. (No model.)

To all whom it may concern:

Be it known that I, OSCAR O. HODGDON, of the city of St. Louis and State of Missouri, have invented certain new and useful Improvements in Dish-Washing Machines, of which the following is a full, clear, and exact description, reference being had to the accompanying drawings, forming a part hereof.

My invention relates to improvements in a "dish-washing machine," and consists in the novel arrangement and combination of parts as will be more fully hereinafter described and designated in the claims.

The object of my invention is to construct a machine operated by steam or other power transmitted thereto which cleanses the dishes by passing them through a course of continuously agitated sprays of hot water, and rinses them by the same devices carrying them through clean hot water.

My improved dish-washing machine is especially adapted for use in hotels, restaurants, and in fact in any establishment where it will pay to substitute this method for the old one.

In the drawings: Figure 1 is an elevation of one side of my complete invention. Fig. 2 is an enlarged detail view, showing the gearing and endless discharge conveyer, with other parts broken away. Fig. 3 is a complete top plan view of my device. Fig. 4 is an enlarged detail view of a portion of the endless conveyer. Fig. 5 is a perspective view of same. Fig. 6 is a longitudinal section view taken on a line *x x* of Fig. 3. Fig. 7 is an elevation of one end of the device. Fig. 8 is an elevation of the opposite end. Fig. 9 is a side elevation of the other side of my complete invention. Fig. 10 is a view in perspective of the spray-pipes and their various connections. Fig. 11 is a diagrammatic end view of the pipe-connections from the basin through the pump to the spray-pipes. Fig. 12 is a transverse cross-section view of one of the rods, and a rubber-cushion covering same.

Referring to the drawings: 1 indicates my complete invention, the parts of which are supported and carried by a frame-work consisting essentially of longitudinal pieces 2 and 3 secured to upright pieces 4, 5 and 6 and other intermediate posts as hereinafter described. The frame-work is similar in construction upon both sides of the machine, and connected together by suitable cross pieces. Secured between the sides of the frame-work and to the horizontal pieces 2 and 3 is a tub or vat 7, made in any suitable manner so as to be perfectly water-tight. Said tub 7 is surmounted by a casing 8, which consists of two boards 9 which are fastened upon the horizontal pieces 2 and held in place by posts 10 and 11, secured to said horizontal pieces 2 and 3, and projecting a suitable distance above same to cover the width of the board 9. The top 12 of the casing 8 is provided with an opening 13 to which a removable lid is fitted to facilitate the inspection of the interior of the casing 8. A narrow projecting board 14 is secured to and extends from one end of the top piece 12, and from which may be suspended a suitable curtain to prevent the water, which is agitated in the interior of the casing 8 from sprinkling outside. A curtain may be also placed at the opposite end of the casing 8 to serve the same purpose.

At a point midway between the casing 8 and the opposite end of the frame-work is secured a shell or basin 15, the sides of which converge only toward the ends of the machine; in other words, said basin 15 has only two sides and a bottom 16. The basin is supported by suitable braces 17 which are secured upon the horizontal pieces 3. A pipe 18 has an outlet 19 in the bottom of said basin 15, and said basin is also provided with an inlet and outlet port by which water is either allowed to run in or run out of the basin according to the desire of the operator.

As will be seen in Fig. 1 an endless conveyer is one of the principal features of my invention. In construction the endless conveyer 20 consists of horizontal shafts or bars 21 having wheels or rollers 22 mounted near each end, the projecting portion 23 of said shafts or rods 21 being provided with exterior screw-threads upon which nuts 24 are adapted to be constructed. The construction of this endless conveyer 20 is what is commonly termed a sprocket-chain. Two of these shafts 21 are connected together at their ends by a link-bar 25 which is held thereon by

the nuts 24. Two of these pairs of shafts are then secured together by a link-bar 26 which is fastened upon the ends of the shafts 21 and over the link-bars 25. It will be seen that by the use of this construction the chain is rendered in such a condition that in an endless form it will adjust itself to the necessary angles when in operation. The brackets or standards 27 which are mounted upon the rods 21, and by means of which the dishes are carried along by the conveyer 20 is formed of one piece of wire bent in the form as shown in Fig. 5 of the illustration and is practically L-shaped in cross-section. The loops 28 formed in the middle of the two portions of wire fit over one rod 21, while the rounded ends 29 are hooked upon the next adjoining rod 21. It will be seen that by this construction that the straight portion 30 intermediate of the loop 28 and the hook 29 guarantees an upright position of the bracket 27, and in any position which the conveyer 20 may attain, the same is at right angles with the rod 21. By referring to Fig. 5 of the illustration, the manner in which the same are placed upon the rod will be more readily understood.

Premising that the rollers 22 have been properly secured upon the shaft 21 while the other end is as yet free from the application of any parts, I will describe the manner in which the construction is completed. First a tubular piece of metal 31 is slipped over the rod 21 and placed adjacent the roller 22. Two of the complete brackets 27 are then placed thereon, that is the hooked ends 29 of of one bracket are placed outside of and adjacent the loops 28 of the other one, and in the operation of placing the same on the rod a piece of rubber-tubing 32 is slipped between the two loops 28 upon the bracket 27. An additional piece of rubber-tubing 32 is then placed between said rows of brackets 27 and the next row, the construction of each being similar throughout the length of the conveyer 20. Additional rows of brackets 27 in alignment with each other are then secured on the rods 21 and after the last row has been fitted in place a piece of metal tubing such as 31 is placed between the bracket 27 and the roller 22 which is then secured upon the other end in a suitable and removable manner. It will readily be seen that by this construction the complete conveyer consists of a number of upright brackets in longitudinal and vertical alignment, with a specified space between each row of brackets, and that the tubular pieces of metal 31 adjoining the brackets at each side serve to control the spring of same and keep them in a stationary position, while the rubber-tubing 32 acts as a cushion upon which the dishes can fall without being broken or cracked.

The endless conveyer travels in a certain position and is controlled by the wheels 22 which adjust themselves to a track consisting of parts as follows, and as best shown in Fig. 6 of the illustration. As hereinafter described, the motion is imparted to the conveyer by sprocket-wheels, and the guide or track starts from one end at the wheels 33, near the discharge end of the machine and conforms with the various angles and planes attained in the construction of the machine. The track 34 starting from the wheel 33 is secured upon the side 35 of the machine and follows in alignment with the drip-board 36 which runs at a slight depending angle into the basin 15. It follows and conforms to the angles of the basin 15 above the bottom of which is secured a lug or block 37 to prevent the undue straining of the conveyer at that point where the depression is so great that the consequent straining of the conveyer in operation requires an additional guide. The track 34 then passes at an upward angle at the same conformed distance from the bottom of the basin 15 until it strikes a point immediately above the drip-board 38. It then extends in a horizontal position over the drip-board 38, tub 7 and drip-board 39 to a point adjacent the sprocket-wheel 40. It is then secured upon a construction of timbers 41, 42 and 43, and which it follows underneath the machine and back to the sprocket-wheel 33 in the following manner. It extends downwardly to the post 10 and then in a horizontal direction below the tub 7 and basin 15, and from a point under said basin 15 it extends upwardly to the sprocket-wheels 33, and it will be seen that this entire construction, including the sprocket-wheels 33 and 40 forms a complete guide or track under which the rollers 22 travel. The construction and position of the track being similar upon both sides of the machine and in horizontal alignment throughout guarantees the adjustment of the conveyer 20.

The timbers 41, 42 and 43 upon which the track or a portion thereof is secured are fastened to the side frame-work of the machine as shown in Fig. 6 of the illustrations.

By reference to Fig. 9 it will be seen that the power to run the pump which forms one of the features of my invention, the endless conveyer 20 and the discharge belt 44 is imparted to the machine by means of a belt 45 running from a shaft-pulley to the pulley 46. Said pulley or driving-wheel 46 is mounted upon a shaft 47 which runs through an ordinary rotary-pump 48, and mounted upon the same shaft is a small pulley 49. A pulley 50 is mounted adjacent the side of the machine and upon a shaft 51 upon which a roller 52, the length of the inside of the frame-work, is also mounted with said shaft mounted in suitable bearings provided. At the opposite side of the machine, and upon the end of said shaft 51 is a small sprocket-wheel 53 which is connected with a larger wheel 54 located upon a shaft 55 in suitable bearings secured upon the sides 35 of the machine. Said wheel 54 is also a sprocket-wheel and connected with the smaller wheel 53 by a link-chain 56, and the operation of which I

need not further detail as it is already well known. The object of constructing this portion of the machine as described, with the sprocket-wheel 54 larger than the wheel 53 from which the power is indirectly obtained is that it is necessary for the shaft 55 upon which said wheel 54 is mounted and which has also a sprocket-wheel 33 mounted thereon, from which the power to run the conveyer 20 is directly transmitted, to run slower than the source of power to conform to the speed at which it is desired to run the conveyer 20.

There are two sprocket-wheels 33 mounted upon the shaft 55 in such a position that the teeth of same engage the rods 21 at a point immediately within the rollers 22 and upon the metal tubing 31 upon said rods 21, when the conveyer 20 is in position.

A shaft 57 located in bearings 58 secured in a horizontal position upon the ends of the timbers 2 of the frame-work, and at the opposite end of the machine has two sprocket-wheels 40 mounted thereon in a relatively similar position to the sprocket-wheels 33 upon the shaft 55, and the operation of which is the same. It will therefore be readily seen that when the endless conveyer 20 is in position it follows the outline of the track 24 shown in Fig. 6 and constantly moves in its plane.

I will now proceed to describe the construction of the discharge-belt 44 and the table and parts connected therewith. A projecting table 59 extends outwardly from the machine and is built therewith, and has constructed at right angles to same a table 60. At a point which I term the outer end of the table 59 is located a roller 61, the end of which being the one at the corner of the table is slightly elevated above the other end for purposes more fully hereinafter described. A continuous canvas or rubber-conveying-belt 44 is adapted to travel upon said roller 61 and the roller 52 upon the shaft 51 by means of which motion is imparted to same. The position of the roller 61 may be best understood by referring to Fig. 8 of the drawings and the tension of the belt 44 is controlled by a roller 62, which is adjustable in the following manner. It is mounted at both ends upon bracket-bearings 63 provided with slots through which bolts 64 pass into the upright posts 5 of the frame-work. When it is desired to tighten the belt, the bolts are unloosened and the bracket-standard 63 is then pushed up thus raising the roller a desirable distance when the bolt 64 is again tightened and the other end of the roller at the other side of the machine similarly treated. The table 59 is level upon its outer sides, while the inner portion 65 is slanted convergingly toward the table 60, the function of such construction being to provide a plane upon which the dishes will assist themselves in passing onto the table 60. Projecting guides 66 and 67 in uniform alignment with each other are secured upon the tables 59 and 60 a slight distance above same to allow of the free movement of the belt 44 under same. The before mentioned driving-pulley 46 and pulley 49 together with a loose pulley 68 are mounted upon the shaft 47 which has its bearing upon one end in the pump 48 and the other in a pillow-block 69. The tub 7 in which the hot soapy-water is kept projects outward from the back of the frame-work as shown in Fig. 7 to facilitate the cleaning of same. The pump 48 is secured upon a suitable base 70 and is of the ordinary rotary suction-pump style. The source of water-supply may either be the tub 7 or basin 15 to which water is conveyed from some outside source. The pipe 18 leading from the basin 15 to the tub 7 has a T-joint 71 therein from which an elbow-pipe 72 leads into the pump 48. A valve 73 between the pump 48 and the basin controls the pumping of water from the basin 15 while a valve 74 in said pipe 18 between the pump 48 and the tank 7 controls the pumping from said tank. Leading from the pump upward is a pipe 75 connected by an elbow 76 to a horizontal pipe 77 and at a point in said pipe 77 is connected a T joint 78 from which a horizontal pipe 79 leads to a vertical pipe 80 upon the end of which is a T-joint 81, having two projecting pipes 82 fitted therein, and proper devices hereinafter described connected to the ends of same by elbows 83 for supplying the water to spray-pipes 84. The horizontal pipe 77 is connected by an elbow 85 with a vertical pipe 86 which extends upwardly outside of the casing 8 and is connected by an elbow 87 with a horizontal pipe 88 located in the top of said casing 8. The end of said pipe has connected therewith a horizontal pipe 89 at right angles with same upon which there is connected a T-coupling 90 at its end to which is connected projecting pipes 91 with similar devices 92 connecting with spray-pipes 93 as in the construction previously described. The tank 7 has an outlet or discharge opening 94, which is controlled by a pipe 95 leading therefrom which may be provided with a valve or other suitable means of controlling the discharge of the contents of the tank.

In operation the basin 15 is supplied with hot, clean water carried thereto by suitable pipes and finding an inlet through one of the holes 96 in the bottom of the basin 15. For the sake of economy the same water is used again in the spray-pipes 84 and 93 after it has been first mixed with soap in the tank 7. The clean water is allowed to fill the basin 15. Then the pump is started and the tank 7 filled with same and then the valve 73 is closed so that the passage of water is direct from the tank 7 through the pump 48 and to the spray-pipes 84 and 93 by means of pipes hereinbefore mentioned. The rocking spray-pipes 84 and 93 are revolubly mounted in the pipes 97 and 92 respectively to allow of the peculiar rocking motion which it is necessary for them to attain, and they are supported at the other

end by suitable hangers 98, having bearings into which the pipes 84 and 93 fit, and which are fastened upon the inner side of the lid 12 of the casing 8, and upon a block 99 immediately above the drip-board 39. Collars 100 with arms 101 are mechanically secured to each of the spray-pipes 84 and 93 of which there are two of each, and both pairs of spray-pipes with collars 100 secured thereto have rocking-bars 102 and 103 pivotally secured to said arms 101. By referring to Fig. 6 of the illustration the relative position of the two sets of rocking spray-pipes 84 and 93 will best be understood. The rocking-bars 102 and 103 project outwardly through the casing 8 and have their free ends turned and flattened to form mountings 104 and 105 to which are pivoted arms 106 and 107 removably mounted upon an upright rod 108 which is revolubly mounted in bearings 109 and 110 secured upon the outside of the casing 8 as shown in Fig. 9. The lever 107 connecting the end 105 of the rocking-bar 103 with the upright shaft 108 is in the form of a bell-crank lever, having an arm 111 formed at right angles therewith, the end of which connects with an eccentric rod 112, which connects with an eccentric 113 secured upon the shaft 47, and by means of which the peculiar rocking movement is imparted first to the rod 108 thence to the rocking-arms 102 and 103 which are connected with the two sets of rocking spray-pipes 84 and 93. The spray-pipes are provided with nozzles 114, which project at four different angles with each other, that is the nozzles depending from the spray-pipes 93 extend in different directions as follows: Alternate nozzles depend downwardly and outwardly while another row depend downwardly and inwardly, and a similar construction is used upon the spray-pipes 84 except in that they project upwardly instead of downwardly. It will be seen that by this construction there are sprays of water thrown against the dishes upon the conveyer 20 in four different directions, two streams being forced by each spray-pipe in two different directions.

In describing the operation of my invention, I desire to say that the view shown in Fig. 1 is that of the rear of the machine, while the view shown in Fig. 9 is the front view of the machine, and these terms are applied because the machine is principally handled by the operator upon the side designated as the front.

As before described, the power to operate the pump 48, the sprays 84 and 93, the endless conveyer 20, and the endless discharge-belt 44 is furnished directly to a pulley 46 from an outside source.

When the machine is started the basin 15 is filled with hot-water, and the tank 7 is also filled with hot-water. Some soap is placed therein to make a strong suds, and a steam-pipe is inserted therein to keep the same hot. When the water in the tank 7 becomes dirty it is discharged through the opening 94, and the water in the basin 15 previously used as rinse-water is pumped into the tank 7, and the basin 15 refilled with clean hot-water after the valve 73, which has been opened during the process of changing the water from the basin to the tank, is closed. Continuing with the operation it is premised that the valve 74 in said pipe 18 is open. Therefore the action of the pump forces the soapy water from the tank 7, into the spray-pipes 84 and 93 through the intermediate pipes as shown in Fig. 11. When the soapy-water in the tank 7 becomes dirty it is discharged through the opening 94, and the water from the basin 15 is pumped therein and mixed with other hot water and soap, and the basin 15 is refilled.

It will be seen that the dishes are placed on the endless conveyer 20 at a point adjacent the casing 8 and the end of the machine. They are carried through the casing 8 and have innumerable sprays of hot soapy-water striking them both from the rocking spray-pipes 84 acting underneath same, and from the rocking spray-pipes 93 which throw the water onto the dishes from above. Still carried by the endless conveyer 20 they are conducted downward through the hot-water in the basin 15 and are thoroughly rinsed before they are carried out of same by the conveyer and thrown upon the continuously moving endless discharge-belt 44 which conducts them upon the table. The dishes are set upon their edges between the rows of standards or brackets 27 as shown by dotted lines in Fig. 1, and when washing cups or bowls the same are placed over the brackets 27 and are held in this position from the time they are placed upon the conveyer until they reach a point where the conveyer turns upon its downward return movement when they are thrown onto the endless discharge-belt 44. The endless conveyer 20 travels downwardly and under the machine, and when the brackets again resume their normal upright position after passing over the sprocket-wheels 40 the conveyer is again in position to receive the dishes. When the dishes are discharged from the conveyer upon the belt 44, said belt carries them with its movement until they strike the round projecting-guide 66 which turns them onto the table 60. The power is transmitted to operate the endless conveyer 20 and the discharge-belt 44 by the belt connecting the wheel 49 upon the shaft 47, with the pulley 50 upon the shaft 51 as hereinbefore described.

The connection between the spray-pipes 84 and 93, and the joints 92 and 97 into which they fit to allow the rocking motion peculiar to said spray-pipes can be made by the use of swivel-joints, packing-joints, or any mechanical devices which will allow of such motion.

The peculiar arrangement of the nozzles 114 upon the spray-pipes render them capable of not only covering every portion of the dish with the force of the streams from said nozzles, but the operation is repeated a great

number of times between the time the dishes upon the conveyer 20 enter one end of the casing 8 and go out at the other end.

With the pulley 46 running at an average speed of one hundred and fifty revolutions per minute, the spray-pipes would have just double the number of reciprocating movements applied thereto, and the large number of such movements and the force of the streams ejected by the nozzles prevent any possibility of a dish passing out from the casing 8 with any dirt thereon.

Having fully described my invention, what I claim is—

1. In a dish washing machine, the combination, with a washing compartment provided with spraying means, a rinsing compartment, and a discharge-belt, of an endless conveyer passing through said washing or rinsing compartments, and adapted to deliver the cleansed dishes upon the discharge-belt; substantially as and for the purpose set forth.

2. In a dish washing machine, the combination, with conveying and washing means, and a table for receiving the cleansed dishes, of an endless discharge-belt leading to said table and having its outer bearing roller elevated outwardly, and a curved guide passing over the outer end of said belt and leading to the table; substantially as and for the purpose set forth.

3. A dish washing machine having an endless conveyer adapted to carry dishes in direct contact with a number of agitated sprays of water, through a hot-water rinsing-basin, and to deliver same upon an endless discharge-belt, substantially as set forth.

4. In a dish washing machine, the combination, with a series of spray pipes loosely journaled in position and provided with arms projecting at right angles therefrom, and a rotary power shaft, of an arm coupling the spray-pipe arms, a bar carrying an arm pivotally connected with the free end of said coupling arm, and with an arm 111, and a pitman 112 connected with the latter and adapted to be reciprocated by an eccentric on said power shaft; substantially as and for the purpose set forth.

5. A dish washing machine having an endless conveyer, consisting of a number of pieces of metal in continuous horizontal alignment, having mounted thereon a number of brackets, each bracket comprising a piece of wire bent to form a loop in one end, loops 28 in the center of the two arms formed by bending said wire, to fit over the rods 21, the ends of said wire hooked to engage over the next adjacent rod 21, rollers 22 mounted upon the ends of said rods, tubular pieces of metal 31 mounted upon said rods between said rollers 22 and the first row of brackets 27 at both ends of said rods, tubular pieces of rubber 32 between said loops 28 and between the rows of brackets 27, said rods 21 connected in pairs by link-bars 25, said pairs thus formed connected by link-bars 26, said link-bars being held on said rods by nuts 24 screwed upon the ends 23, projecting beyond the rollers 22 on the rods 21, substantially as set forth.

6. A dish washing machine having an endless discharge-belt, a shaft 51, a roller 52 mounted on said shaft 51, a roller 61 mounted upon a shaft inclined at an angle, the highest end of same being at the outer corner of the table 59, the lower end of said roller at a point 60 where the table is joined with said table 59, a projecting-guide 66 immediately adjacent and above a discharge-belt 44, a guide 67 upon the table 60, and said guide 66 having a bent portion in its length above the belt 44 to direct the movement of the dishes thereon, substantially as set forth.

7. A dish washing machine having spray-pipes 84 and 93, joints 92 and 97 into which one end of said spray-pipes fit, bearings 98 into which the other ends fit, nozzles projecting from said spray-pipes at different angles, rocking-bars 102 and 103 pivoted to collars 109 immovably mounted upon said spray-pipes, said upper rocking-bar 102 connected with an upright shaft 108 mounted in brackets 109 by an arm 106, a bell-crank-lever 107 connecting said lower rocking-bar 103 with a shaft 108 and an eccentric-rod 112 and a means furnished for operating said rocking-bars 102 and 103 and the spray-pipes connected therewith, substantially as set forth.

8. A dish washing machine having rocking spray-pipes, a shaft, rocking bars and levers connecting said pipes and shaft, a revolving eccentric, and an eccentric-rod mounted on the latter and adapted to revolve said shaft; substantially as set forth.

In testimony whereof I affix my signature in presence of two witnesses.

OSCAR O. HODGDON.

Witnesses:

HERBERT S. ROBINSON,

ALFRED A. EICKS.

No. 864,131. PATENTED AUG. 20, 1907.

C. H. HOOD.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED MAR. 1, 1906.

2 SHEETS—SHEET 1.

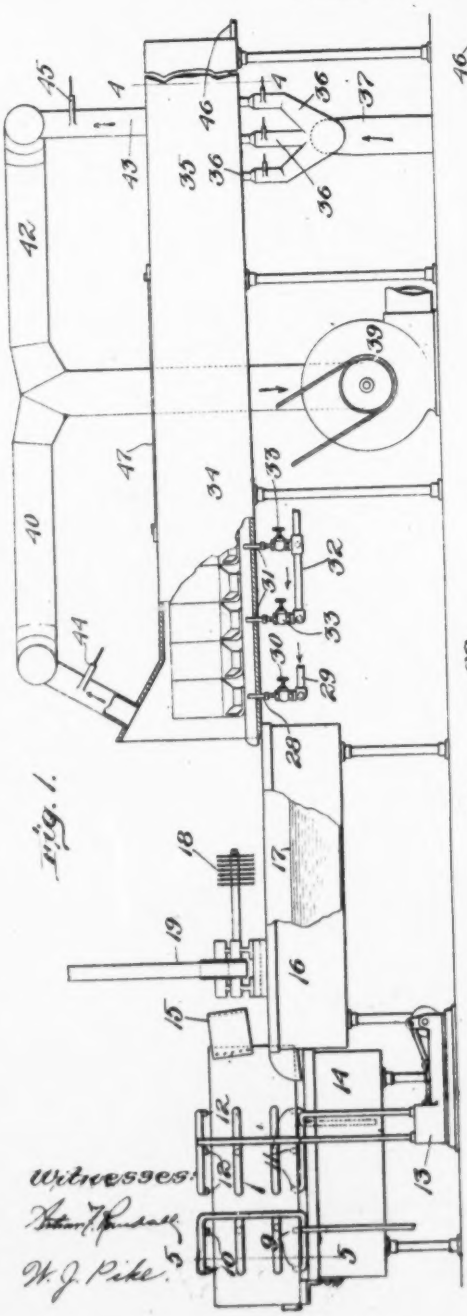


Fig. 1.

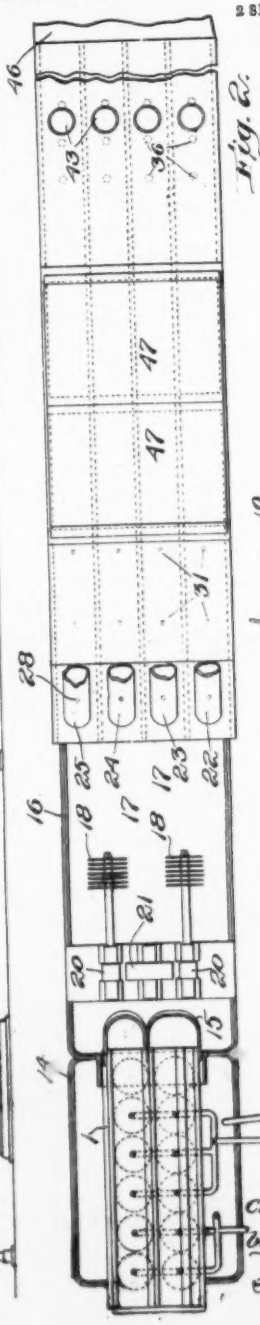


Fig. 2.

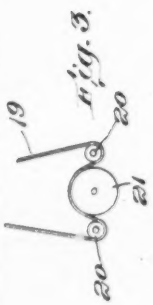


Fig. 3.

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No. 864,131. PATENTED AUG. 20, 1907.

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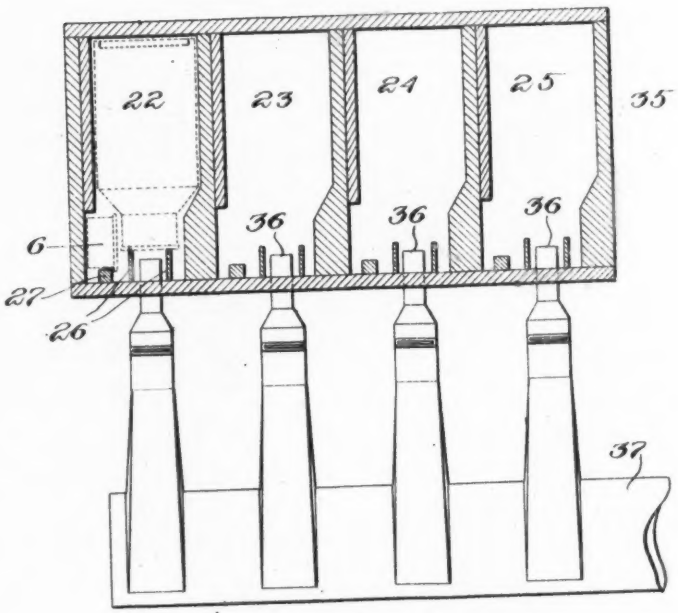
APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK CANS.

APPLICATION FILED MAR. 1, 1906.

2 SHEETS—SHEET 2.

Fig. 1.



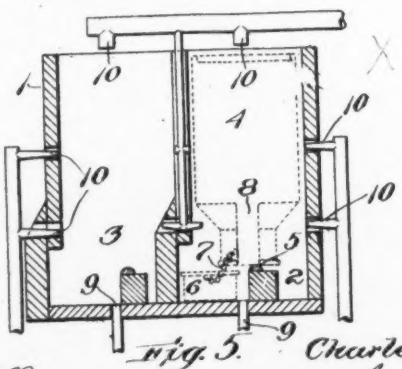


Fig. 5.

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UNITED STATES PATENT OFFICE.

CHARLES H. HOOD, OF SOMERVILLE, MASSACHUSETTS.

APPARATUS FOR CLEANING, STERILIZING, AND DRYING MILK-CANS.

No. 864,131. Specification of Letters Patent. Patented Aug. 20, 1907.

Application filed March 1, 1906. Serial No. 303,643.

To all whom it may concern:

Be it known that I, CHARLES H. HOOD, a citizen of the United States, residing at Somerville, in the county of Middlesex and State of Massachusetts, have invented an Improvement in Apparatus for Cleaning, Sterilizing, and Drying Milk-Cans, of which the following description, in connection with the accompanying drawings, is a specification, like letters on the drawings representing like parts.

Modern hygienic requirements necessitate special cleanliness in the handling of milk, while at the same time the magnitude of city trade necessitates apparatus capable of handling milk cans and the like in large numbers in a short time. Accordingly I have devised the hereinafter described apparatus which provides such arrangement and thoroughness that it can be relied upon not only to cleanse the cans thoroughly, but to sterilize and dry them thoroughly before they have reached the out-going end for inspection.

Stated in general terms, my invention may be said to comprise a washing section for thoroughly removing any greasy deposit, dirt or other substance from the inside and outside of the cans, a cleaning section to remove the suds and dirty water used in washing, a sterilizing section, preferably consisting of a steaming portion, and a baking portion, and finally a drying section for thoroughly drying the inside of the cans just prior to their exit from the machine and their inspection.

The constructional details of my invention will be more fully pointed out in the course of the following description, reference being had to the accompanying drawings, in which I have shown one embodiment of my invention, and the latter will be more particularly defined in the appended claims, forming part of this specification.

In the drawings, Figure 1 represents in side elevation, parts being broken away for clearness of illustration, one form of my apparatus, in which it is operated largely by hand. Fig. 2 is a top plan view thereof. Fig. 3 is a detail of the brush operating mechanism. Figs. 4 and 5 are enlarged cross-sectional details taken on the lines 4—4 and 5—5 respectively, Fig. 1.

The problem of properly washing and sterilizing tin milk cans is much more difficult than if the cans were composed of glass or other material, as it is not practicable to see any internal foulness, they quickly and readily rust, and as a rule they are abused and more carelessly treated before reaching the cleansing apparatus than is the case with glass cans and the like. Accordingly, to make certain that the cans shall be thoroughly and properly treated at every stage in their progress through the apparatus, I have purposely devised an apparatus in which the cans must halt individually for a considerable length of time at each stage in their progress, so that thereby they will be subjected to each distinct treatment for the requisite extent of time in spite of any negligence or haste on the part of the operator. I have herein shown my invention as hand-operated, this being the most simple embodiment of my invention, but I wish it understood that I am not limited thereto, as the required halting or step by step procedure may be secured by other means.

Referring to Figs. 1 and 5, it will be seen that I have provided a preliminary cleansing tank 1, having passages 2, 3 for cans which are fed thereinto at the left-hand end, being placed bottom-side-up, as indicated in dotted lines at 4, to travel on a rack 5, a wide space being left at one side thereof for the usual stopper 6, (if used), secured by chain 7 to the handle 8 of the can. As soon as the can has well entered the channel 2 or 3, it is subjected to a blast of warm plain water from a nozzle 9, internally, and from a nozzle 10, externally, to remove any loose superficial dirt, milk, ice, or the like, and then is moved along to other nozzles 11, 12, above and below, connecting with a pump 13 for subjecting the cans to a bath of hot soap-water, which is herein shown as taken from a tank 14. The jets of hot soap-water or other cleansing fluid are played upon the cans while they stand over the jets 11, and then the cans are moved forward to the open right-hand end of the chamber 1, where their upper ends come in contact with a U-shaped stop or hood 15, which arrests the upper end while the lower end continues forward, thereby giving the cans a tipping movement as they drop into a tank 16, filled with the cleansing fluid 17, and the cans as they are filling with this cleansing fluid pass on to the right-hand end of said tank 16, where they are taken up one by one by an operator standing at that point, who forces them over a brush 18 for thoroughly scrubbing the inside surface. I deem this step in the process desirable because, although the jets at 11 may be depended upon for cleansing the extreme bottom of the can, against which they have direct access, they cannot be depended upon for cleansing the neck and side walls, as they do not have such direct access thereto, and hence I deem it preferable to employ the brush 18, one being located at each side of the tank 16 and driven from a belt 19, see Fig. 3, held tight against the spindles 20 of the brushes by an idler 21. Beyond the tank 16, and preferably slightly above the same, is a closed passage-way, herein shown as divided into four longitudinal compartments, 22, 23, 24, 25, see Figs. 2 and 4, open at their opposite ends but otherwise closed. In each of these passageways I provide tracks of any suitable kind, herein shown as consisting of metal plates 26, on which the cans may slide, a rail 27 being herein shown at one side thereof for receiving the

stopper 6 if used; otherwise the opposite sides will be alike and the rail omitted. At the extreme left-hand end of these passageways I provide a row of nozzles 28, of which there may be one or more for each longitudinal compartment. These nozzles lead from a supply pipe 29 of clean water, controlled by a cock 30, so that as each can arrives in position over the nozzle 28 the soap-water or other cleansing compound is thoroughly washed from the can. Beyond the nozzle or nozzles 28 I provide one or more nozzles 31, connected to a steam pipe 32 and controlled by cocks 33 or other suitable means for delivering steam for sterilizing purposes. These successive nozzles are spaced apart at exactly the distance to bring them beneath the center of the open ends of the cans as the latter travel over them, tipped bottom-side-up. The steam jets deliver continuous blasts of devitalizing steam into the cans. Having passed the last steam jet, the cans travel through a long space, extending from about the point 34 to the point 35, Fig. 1, of confined air, which constitutes a steaming or sterilizing oven, this space being of sufficient length to afford ample time for completing the killing of all the bacteria which might yet possibly remain in the can. This baking oven and the other portions of this part of the apparatus, are maintained in proper operative condition by a circulation system, in explaining which I will now mention the next portion of the compartment at the right-hand end of the apparatus, which is provided with hot air blasts 36, three thereof being herein shown for each compartment, supplied with dry hot air from a suitable source 37, and preferably controlled by hand dampers 38.

The nozzles 36, see Fig. 4, extend upward into position to deliver a strong blast of dry hot air, which is blown continuously into the cans as they halt over these successive nozzles. At a suitable place I provide a suction fan 39, or other means of causing a positive forward draft. This connects by a pipe 40 with the left-hand end of the compartments or passageways at 41, and preferably by a pipe 42 with the forward end at 43, dampers 44 and 45 being shown for properly regulating and balancing the circulating system. This exhaust apparatus may be varied widely and differently applied for accomplishing my purpose. The main object of the right-hand portion of the apparatus is to thoroughly sterilize and dry the cans, especially on the inside. As is well known, sterilization can be accomplished more rapidly in the presence of steam than if the air is absolutely dry. Hence I wish to have the oven portion of my apparatus, *i. e.* the part extending from 34 to 35 say, capable of maintaining the cans in a moist sterilizing heat which shall be so uniform and of such high temperature that the sterilization will be thorough, and then after the cans have been thoroughly sterilized they must be as thoroughly dried so that they will not rust or for any other reason gather dirt or become foul, as they must if wet. Several features combine to secure these results. In the first place, the longitudinal compartments or passage ways are of such size and shape that the cans serve practically to close said passage ways, thereby preventing, to a large degree, the escape and free circulation of the steam, hot air, etc., and retaining the steam and hot air in and between the cans as the latter progress step by step through said passage ways. The forward movement of the cans tends to maintain a proper steaming condition in the highly heated central portion of the passage ways which I have called the oven portion, and the forced blasts of hot air at the opposite end serve to choke back said steam and retain it in said central portion. As, however, it is necessary to employ a large quantity of this superheated steam from the jets 31, more or less of said steam tends to escape from the entrance end of the passage way and this escaping steam is immediately caught by the suction apparatus 39, 40 and pulled away from the room, said suction apparatus being preferably so operated as to maintain the removal of this surplus steam without preventing, however, the proper amount of steam from flowing toward and into the oven-portion of the apparatus. The hot air blast furnishes sufficient hot air to absorb the greater portion of the steam which reaches that end of the oven and my exhaust apparatus enables me, when necessary, to control the steam supply so as to prevent the steam from encroaching upon the drying portion of the apparatus. As will be seen from Figs. 1 and 2 I have broken away the outer portion of the drying apparatus, the latter being of considerable longitudinal extent in view of the fact that all moisture must be absolutely dried away before the cans reach the inspection table 46. Sometimes there is a large amount of moisture, especially in the cavity forming the bottoms of the cans. By maintaining a practically sterilizing heat from the moment that the cans reach the first nozzle 31 until substantially their exit onto the inspection table 46, I effect proper sterilization of the cans both inside and outside, and particularly on the inside, and thoroughly dry these tin cans before they have had access to the ordinary outside atmosphere and temperature, so that when they reach the latter they are in the proper condition, practically sterile, and in which outside bacteria would not easily multiply.

I have omitted to show herein in detail the inspection apparatus, as I have more fully shown and described the same in connection with another embodiment of my present invention set forth in a concurrent application. Doors 47 are provided for the purpose of access to the interior of the sterilizing oven or steam-bath portion of the apparatus. Ordinarily the pipe 42 may be omitted, especially in small plants.

In operation the attendant places one can after another in the passageways 3, 4, and it is obvious that by reason of the construction and arrangement of the apparatus there must necessarily be an interval of time between the placing in position of successive cans, so that the train of cans, as he shoves them along by hand, upon the insertion of each additional can, has a step-by-step or halting movement, which is an essential part of this embodiment of my invention, as I depend upon this movement to enable the cans to be thoroughly and fully treated by the successive jets, etc., of the apparatus. First, the can is thoroughly washed with plain warm water from the nozzles 9, 10, and next halts over the soap-water nozzles 11, 12, where it is thoroughly washed with cleansing fluid. Then the can is tipped by the tipping device 15 and dropped into the tank 16, where it floats to the operator in front of the brush 18, over which it is placed and thoroughly scrubbed inside and outside. Ordinarily the cleansing will be ample

without the brush 18. After this process the operator places the can bottom-side-up as before, in one of the passages 22—25, where it is shoved over the first jet 28, which thoroughly rinses the inside of the can with clean water. It halts in this position while the operator is attending to another can and placing it in the next passage, another operator meanwhile performing the same operations on the other side of the apparatus. Having placed a can in passageway 23, the next can is placed in passageway 22 again, which operates to shove all the cans along one step. The result is that the cans are brought over the steam jets 31, 31 for a considerable period of time, and are then in the sterilising oven 34, 35 for a still longer period, the timing thereof being ample for thoroughly sterilizing the inside of the can. Inasmuch, however, as the cans reach this position thoroughly drenched, I have found it advisable to provide the hot air nozzles 36 for finally treating the inside of the can to a pressure blast of dry hot air, which completely carries away all remaining moisture from the interior of the can, so that when the can finally drops out onto the inspection table 46 it is absolutely dry inside and outside as well as thoroughly sterilized.

It will be observed that the apparatus is so arranged that, although the cans have a slow step-by-step movement from the very beginning to the end of their treatment, they move more rapidly during the first portion of their treatment, being subjected to the initial washing process for the shortest period, then to the soap-water washing for a slightly longer period, then to the cleansing with clean water for approximately the same period, or perhaps very slightly longer, then to the steam sterilizing for a considerably longer period and to the oven sterilization for a yet longer period, while the hot air drying process is substantially as long. I have found that substantially the foregoing arrangement is thoroughly effective for accomplishing the best results. It will be understood, however, that various changes and substitutions may be resorted to without departing from the scope of my invention, inasmuch as I believe that I am the first to have provided a milk-can sterilizing and drying apparatus. Also a further distinguishing feature of my invention resides in treating the tin cans in a closed passage way open at its ends, so that the cans themselves act to stop the passage way as they are moved step-by-step. This not only tends to economize the heat and prevent choking the room with steam, etc., but it maintains the cans from extraneous contamination from the time their cleansing begins until they are turned out absolutely dry and sterilized. In fact, I believe it is impossible to accomplish these results properly without a closed passage or chamber.

Certain of the claims contained hereinafter are intended to be generic to the forms of my invention shown in my copending applications Ser. No. 340,335 and 340,336 filed Oct. 24, 1906. As already stated, I employ the various jets and blasts in large volumes, and one function of the exhaust apparatus is to prevent the resulting surplus steam, moisture, etc., from escaping into the room. I have found that by directing the liquid with impinging force in large volumes against the surfaces of the cans and similarly employing large volumes of air within and without the cans, the circulation being forced or rapid under high pressure, superior results may be obtained notwithstanding a comparatively rapid forward movement of the cans through the passages. Of course it will be understood that the size of the nozzles as well as the kind and arrangement of the nozzles will be varied to suit different shapes and sizes of cans. For instance, in my above mentioned copending applications I have shown variations of my invention specifically adapted to different sizes and kinds of cans.

Having described my invention, what I claim as new and desire to secure by Letters Patent is:

1. A device for sterilising milk cans, consisting of means for subjecting the interior of the cans to a live steam bath for a given length of time, means for thereafter subjecting the cans to a slower sterilising process, and means for thereafter mechanically withdrawing the surplus moisture, for perfecting and hastening the sterilising and drying of the cans.

2. In an apparatus of the kind described, a closed passageway provided with means for receiving and transmitting inverted milk cans, said passageway having means adjacent one end for delivering to the interior of said cans jets of steam, means adjacent the opposite end for delivering to the interior of said cans blasts of hot air, and means intermediate said two ends for thoroughly baking the cans.

3. In an apparatus of the kind described, a passageway entirely closed excepting at its ends, approximately the size in cross-section of the tin milk cans to be treated, and containing means for enveloping said cans in a steam bath in said confined space, and means for thereafter subjecting said cans to a forced circulation of air.

4. In an apparatus of the kind described, a closed passage way open at its ends for receiving and transmitting a series of tin milk cans, means for delivering a copious supply of steam to said cans within said passage way, and an exhaust apparatus for preventing the surplus steam from escaping at said open ends.

5. In an apparatus of the kind described, a closed passage way open at its opposite ends to receive a series of milk cans following one another step by step through said passage way, means for subjecting said cans successively to jets of steam, means for thereafter enveloping said cans in a steam bath as they are moved forward, means for then drying said cans in an adjacent section of said passage way, and means for maintaining the steam in the steaming end of the passage way and away from the drying end of the passage way and for preventing the escape of the surplus steam into the room.

6. In an apparatus of the kind described, a closed passageway open at its ends provided with means for receiving and transmitting inverted milk cans, said passageway having means adjacent one end for delivering to the interior of said cans jets of steam, means adjacent the opposite end for delivering to the interior of said cans blasts of hot air, means intermediate said two ends for thoroughly baking or steaming the cans, and means for removing any surplus steam liable otherwise to escape into the room.

7. In an apparatus of the kind described, a closed passageway open at its ends, provided with means for receiving and transmitting inverted milk cans, said passageway having means adjacent one end for delivering to the interior of said cans jets of steam, means adjacent the opposite end for delivering to the interior of said cans blasts of air, means intermediate said two ends for thoroughly sterilizing the cans, and means for controlling the escape of steam from said passage way.

8. In an apparatus of the kind described, a passageway provided with means for transmitting inverted milk cans in a series, means for delivering a jet of cleansing water to the interior of said cans, means for thereafter delivering steam to the interior of said cleansed cans, means for thereafter baking the cans as they pass along said passageway, and a suction apparatus connected to said passageway adjacent the entrance end thereof, for withdrawing the surplus steam and vapor.

9. In an apparatus of the kind described, a closed passageway substantially the size and shape of the inverted

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cans to be treated for the reception of said inverted milk cans, sterilizing apparatus at one end thereof, drying apparatus at the other end thereof, and exhaust means for withdrawing all surplus moisture from said passageway.

10. In an apparatus of the kind described, means for subjecting the interior of the tin milk cans to a bath of sterilizing steam for a given length of time, and means, including a forced air circulation, for thereafter mechanically withdrawing the surplus moisture, for perfecting and hastening the sterilizing and drying of the cans.

11. In an apparatus of the kind described, means for delivering to the interior of the cans a bath of cleansing fluid under pressure, means for subjecting the interior of the tin milk cans to a bath of sterilizing steam for a given length of time, and means, including a forced air circulation, for thereafter mechanically withdrawing the surplus moisture, for perfecting and hastening the sterilizing and drying of the cans.

12. In an apparatus of the kind described, means for subjecting the interior of the tin milk cans to a bath of sterilizing steam for a given length of time, means including a forced air circulation for thereafter mechanically withdrawing the surplus moisture, for perfecting and hastening the sterilizing and drying of the cans, a passageway open at its ends for receiving and transmitting said milk cans, said passageway containing the aforesaid steaming means and forced air circulation means, and means cooperating therewith for controlling the escape of steam from said passageway.

13. An apparatus of the kind described, comprising inclosed ways for the passage of the cans, means for washing the cans, means for sterilizing the cans, and means for drying the cans, located to operate in succession on the cans as they pass through the apparatus, said washing means including means for delivering a large volume of washing fluid under high pressure with direct impinging force against the inside surface of the cans, and said drying means including means for delivering a great volume of rapidly moving air under pressure within and without the cans as they pass along.

14. An apparatus of the kind described, comprising inclosed ways for the passage of the cans, means for washing the cans, means for sterilizing the cans, and means for drying the cans, located to operate in succession on the cans as they pass through the apparatus, and said drying means including means for delivering a great volume of rapidly moving air under pressure within and without the cans as they pass along.

15. An apparatus of the kind described, comprising inclosed ways for the passage of the cans, means for washing metal cans located at the forward part of the apparatus, means for delivering a huge volume of drying air under rapid movement for drying said cans at the rear portion of the apparatus, and exhaust apparatus for confining said rapidly moving volume of air within said confined ways and preventing its escape into the room when charged with moisture.

16. An apparatus of the kind described, comprising an inclosed way through which the cans may be moved, having width sufficient to accommodate a plurality of series of metal cans, a plurality of depending guides at the top of said inclosed way for guiding the milk cans in separated columns, and a plurality of raised tracks independent of and separate from said depending guides for supporting the cans, and a stopper track at one side of said supporting tracks in position to receive the stoppers and maintain them in uniform alinement for passing freely along.

17. An apparatus for cleansing milk cans, comprising means for delivering a large volume of washing fluid under high pressure to the interior of a can, means for thereafter delivering a large volume of rinsing water to the interior of said can, means for then delivering a large volume of sterilizing fluid to the interior of the can, and means for finally delivering a large volume of drying air to the interior of the can.

In testimony whereof, I have signed my name to this specification, in the presence of two subscribing witnesses.

CHARLES [illegible]

Witnesses:
[illegible]
M. A. [illegible]

No. 768,836. PATENTED AUG. 30, 1904.

R. G. & K. K. WRIGHT.

APPARATUS FOR FILLING BOTTLES.

APPLICATION FILED MAY 29, 1903.

NO MODEL.

Fig. 1

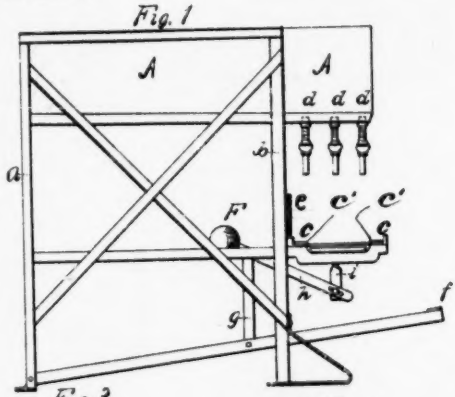


Fig. 2

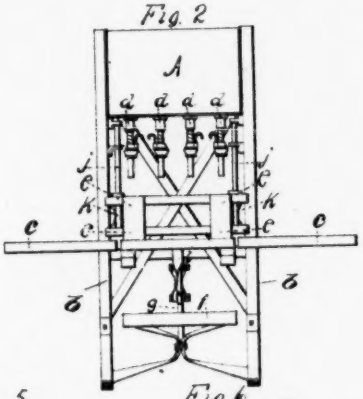


Fig. 3

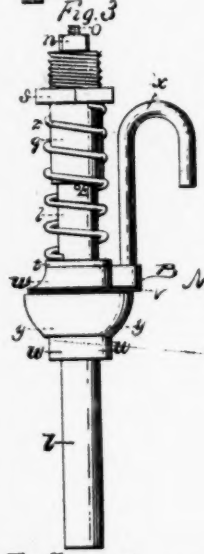


Fig. 4

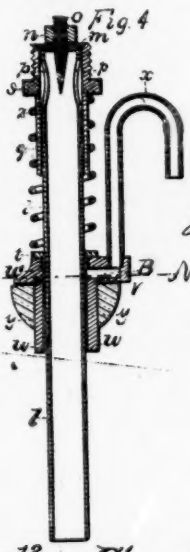


Fig. 5

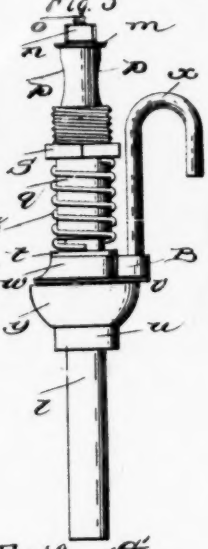


Fig. 6

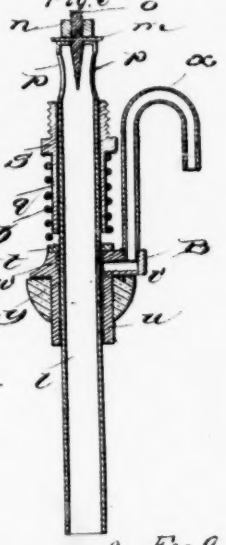


Fig. 7

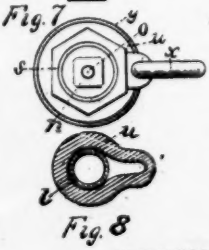


Fig. 8

Fig. 12

Fig. 13

Fig. 10

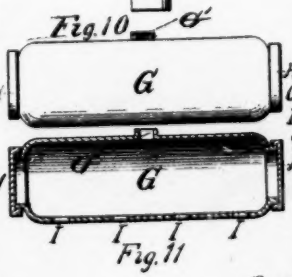
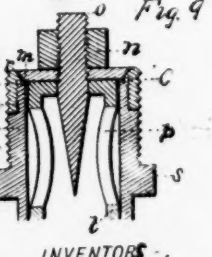


Fig. 11

Fig. 9



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No. 768,836. Patented August 30, 1904.

UNITED STATES PATENT OFFICE.

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RALPH G. WRIGHT AND KIRK K. WRIGHT, OF BUFFALO, NEW YORK.

APPARATUS FOR FILLING BOTTLES.

SPECIFICATION forming part of Letters Patent No. 768,836, dated August 30, 1904.

Application filed May 29, 1903. Serial No. 159,261. (No model.)

To all whom it may concern:

Be it known that we, RALPH G. WRIGHT and KIRK K. WRIGHT, residing at Buffalo, in the county of Erie and State of New York, have invented certain new and useful Improvements in Apparatus for Filling Bottles, of which the following is a full, clear, and exact description, such as will enable others skilled in the art to which it appertains to make and use the same.

Our invention relates to improvements in apparatus for bottling liquids of all kinds, and especially for bottling milk and those liquids which by overflowing to the outside of the bottles while being filled are liable to taint or soil the outside of the bottles.

The object of the invention is to provide an easily-operated, cheap, reliable, sanitary, and effective apparatus for bottling all liquids without waste even when bottles that are being filled at the same time are of different heights and have mouths of different sizes.

Other objects will appear from the hereinafter description.

We declare the following to be a full, clear, and exact description of our invention, such as will enable others skilled in the art to which the apparatus appertains to make and use the same, reference being made to the accompanying sheet of drawings, which forms part of this specification.

In the said drawings, Figure 1 represents a side elevation of the invention. Fig. 2 is a front elevation thereof. Fig. 3 is a side elevation of one of the filling-valves closed. Fig. 4 is a vertical section of the same, taken on a plane passing through the center of the valve. Fig. 5 is an elevation of the filling-valve open. Fig. 6 is a side section of the same, taken on a vertical plane passing through the center of the valve. Fig. 7 is a top plan view of the valve. Fig. 8 is a cross-section of the same, taken on the line *m n*, Fig. 4. Fig. 9 is an enlarged vertical section of the upper part of the valve, showing a modified form of construction. Fig. 10 is a side view of a form of tank to be used for bottling beer or other liquids having a permanent pressure or head. Fig. 11 is a vertical section of this tank. Fig. 12 is an end view, and Fig. 13 is a cross-section thereof.

Referring to the drawings in detail, in which like reference-letters designate the same parts in the different views, the letter A represents the tank containing the liquid to be bottled. This tank is supported on a frame having four legs *a a b b*, the two rear legs being on the rear corners of the frame while the two front legs are a short distance in front of the central line of the frame. This construction of the frame permits the tank to extend beyond the front legs *b* and over a horizontal track *c c*, connected to or forming a part of the said frame. The tank is so supported on this framework that its front end is slightly lower than the rear, so that the liquid will flow or collect toward the front end. The bottom of the tank forward of the legs *b* is provided with a number of holes *d*, corresponding to the number of bottles contained in a specially-made case or crate, these holes having their centers the same distance apart as the mouths of the bottles while occupying places in said case or crate. An externally-screw-threaded collar, to be hereinafter described in connection with the valve, is secured in each of these holes and through which the upper end of the tube of the valve passes.

Located on the front end of the frame and under the valves is a basket *e*, adapted to be moved vertically up and down by means of a foot-tread *f* and a system of levers *g*, *h*, and *i*. The upper end of the part *i* is fastened to the bottom of the basket, the lower end working on a pin passing through a slot in the lower or forward end of the lever *h*. This lever is bolted or pivoted at its rear end to the upper end of the lever *g*, the lower end of the lever *g* being pivoted to the foot-tread *f*, which is forked and is pivoted to the rear legs *a*.

F is a weight secured to the inner end of the lever *h* to counterbalance the basket *e*. This basket is guided in its vertical movement by the guide-rods *j j*, secured by brackets to the inner side of the front legs *b* and also by the two sleeves or guides *k*, attached to the basket. On either side of this basket and secured to the frame is a section of track so arranged that when the basket is down in its normal position the basket and the two sections form one continuous track or guideway

for the crate, this track being of such length as to accommodate three of the crates above referred to when placed end to end on the track. In the operation of the machine the crates are moved from left to right on the track, and on the right-hand end of the right section stops *c'* are secured so as to prevent a crate from being shoved off the track. The basket is also provided with stops, so that when a crate is slid onto the basket from the left-hand section of track the crate will be stopped in such a position that the necks of the bottles will be directly under the valves.

Figs. 3 to 8 show the construction and operation of the valves that we have invented to use in connection with our apparatus. *l* is a tube, and a puppet-valve *m*, frusto-conical in shape, is screwed or otherwise secured to the top of the tube, as follows: *o* is a division or strengthening plate which is secured to the top and soldered to the inside of the tube *l*. That part of the plate within the tube showing on a section at right angles to the section of Figs. 4 and 6 is rectangular in shape. The upper part of the plate *o* is reduced and made cylindrical in shape, this reduced portion being screw-threaded, as shown, to receive a lock-nut *n*, which secures the puppet-valve to the upper end of the tube. The upper end of the tube is provided with the elliptical openings *p* on each side of the division-plate *o*. A sleeve *q* surrounds and fits snugly the tube *l*. The upper end of this sleeve is provided with a valve-seat *r*, on which the valve *m* seats. This sleeve is provided with a flange S, formed into a hexagonal nut to accommodate a wrench, by which the valve may be screwed into the screw-threaded collar secured in the holes *d*, above described, the upper part of this sleeve being screw-threaded to fit in said collar. *t* is a sleeve screw-threaded on the outside, a collar being formed on its upper edge. This sleeve is soldered to the tube *l* about midway of the length thereof. *u* is another sleeve screw-threaded onto the sleeve *t*. The sleeve *u* fits loosely around the tube *l*, leaving a slight space or channel between the inner surface of this sleeve and the outer surface of the tube and is provided with a collar *w* at its upper end, against which abuts the stopper *y*, fitted over the sleeve *u*. This collar is enlarged at *v*, said enlargement being provided with an opening or chamber which communicates with the channel between the sleeve *u* and the tube *l*. X is a tube screw-threaded into *v* and communicates with the chamber therein. *z* is a spiral spring which fits closely over the sleeve *q* and the tube *l*, the upper end abutting against the hexagonal nut S and the bottom against the collar or sleeve *t*, so as to normally keep the valve in its closed position, as shown in Figs. 3 and 4. The valve-seat above referred to may be made integral with sleeve *q*, as above described. In Fig. 9, however, is shown a modification in which the upper part of this sleeve may be reduced and provided with screw-threads and a sleeve D, secured on this end of the sleeve, the outer surface of this second sleeve being screw-threaded to correspond with the screw-threads of the sleeve *q*. C is a gasket fitted between the end of the sleeve *q* and the sleeve D, the latter having an inwardly-projecting flange which fits over the gasket and holds it securely in place and making a tight seat for the valve *n*. The upper end of the sleeve *d* is inwardly beveled to correspond to the seating-face of the valve *m*. This gasket fits close up against the tube *l* and forms a tight joint around the tube as the said tube is raised and lowered, thereby preventing entrance of air in and around the valve while the apparatus is idle or while bottles are being filled. The tube *l* is provided with an air opening or vent E to permit the air to enter the tube below the valve when the valve is in the position shown in Figs. 3 and 4, so that the liquid can quickly run out of the tube as the basket is lowered with the filled bottles.

The apparatus as described operates as follows: A crate containing the number of bottles to be filled, generally a dozen, is placed on the left section of the track *c*, and the crate is then slid to the right onto the basket *e* against the stop on the basket. When the crate is in this position, the mouth of each of the bottles is directly underneath each one of the valves. The foot-tread *f* is then pressed down and through the system of levers *g*, *h*, and *i* the basket carrying the crate of bottles is raised, the basket being guided by the rods *j* and guides *k* and the mouths of the bottles being raised and guided to the valves so that the tube fully enters the mouths of the bottles until the stoppers *y* take against the edge of the bottles, when a movement of the tread *f* raises the tube *l* through the sleeve *q*, compressing the spring *z* until the valve unseats or is open, as shown in Figs. 5 and 6, permitting the liquid to flow from the tank A through the elliptical opening *p*, down the tube, and into the bottles. During this filling operation the air escapes between the loosely-fitting sleeve *u* and the tube *l* to the enlargement B and thence through the bent tube *x*. If any liquid should be carried along with the air, it flows out of the bent tube into troughs (not shown) communicating with a receptacle placed in a convenient position. The sleeve *u* and the stopper *y* fit into the neck of the bottle and prevent the bottle from being filled to the top. When all the bottles are filled, the pressure of the foot on the tread is removed, whereupon the basket carrying the crate of filled bottles is lowered to its normal position. At the same time the pressure is removed from the spring *z*, which forces the tube down, and the valve is seated. If one bottle should be filled more rapidly than another, the liquid will flow through the tube *x* and into the re-

ceptacle without waste. As soon as the bottles in this crate are filled the crate is moved along to the right section of the track *c* until it abuts against the stops, where the bottles are capped or stoppered. When this is done, another crate of bottles is placed upon the left section of the track, then moved to the right onto the basket, where the operation of filling is repeated.

By this apparatus a large number of bottles occupying separate compartments in the crate can be filled very rapidly and economically, one crate containing the unfilled bottles being in readiness to be moved onto the basket to be filled while another crate is being filled and the third being capped.

The tube *l* is made of such length that it reaches near to the bottom of the bottle. This arrangement greatly decreases the tendency that most liquids have to foam during the process of filling. What foam, however, that rises escapes with the air through the vent-tube, as before described. For most liquids a tank such as A would be found satisfactory; but for bottling beer or other liquids from kegs or barrels under pressure it is preferable to use a tank such as shown in Figs. 10 to 13 on the drawings. This tank G is made of metal and is air-tight. The ends of these tanks are provided with screw-threaded caps H, that may be readily removed and permit access to the inside of the tank, so that they can be readily cleaned. This tank is provided with openings *i*, which may be screw-threaded to permit the valves to be screwed into the tanks. This tank occupies the same relative position on the frame that the forward end of the tank A does. In other words, it is located so that the valve will be directly under the bottles to be filled. The upper part of this tank is provided with a screw-threaded nipple G', onto which a flexible tube or pipe is connected, which leads to the barrel or keg containing the liquid under pressure.

It is quite evident that various changes may be made in this device as disclosed without departing from the spirit of our invention. We therefore do not limit ourselves to the exact construction herein shown and described.

Having described our invention, what we claim as new, and desire to secure by Letters Patent, is—

1. In an apparatus for filling bottles, a tank, a series of valves connected to the tank, each of said valves consisting of a tube having an opening near the upper end thereof and a valve secured to said upper end, a sleeve surrounding the tube having a valve-seat thereon against which the valve on the tube seats, another sleeve rigidly and removably connected to the tube whereby when the latter sleeve is raised the tube is moved through the first sleeve to unseat the valve and to uncover an opening through which liquid may pass into the tube, the said second sleeve and tube being so adapted and arranged as to leave a channel or passage-way between the said sleeve and tube, as and for the purpose set forth.

2. In an apparatus for filling bottles, a valve consisting of a screw-threaded sleeve adapted to fit in a tank to hold liquid to be bottled, a tube adapted to move vertically in the tank, the upper end of the tube carrying a valve, this end of the tube also having openings through which a liquid may pass, when the valve is unseated, a sleeve secured to the tube, the said sleeve fitting loosely around the tube whereby there is a passage-way formed between the tube and the inner surface of the sleeve, and means between the two sleeves to keep the valve normally on its seat as and for the purposes specified.

3. In an apparatus for filling bottles, a tube closed at its upper end and having a valve connected thereto and also having openings below the upper end thereof, a sleeve surrounding the upper end of the tube to close the openings and on which the valve is seated, said sleeve being adapted to be attached to a tank containing a liquid to be bottled, a sleeve secured to but loosely surrounding the said tube, said sleeve having a recess therein, a bent tube communicating with said recess and a spring between the two sleeves and surrounding the tube, said spring adapted to keep the valve normally on its seat and the opening at the upper end of the tube closed.

4. In an apparatus for filling bottles, a tank adapted to contain the liquid to be bottled, a series of openings in said tank, a series of valves connected to said openings, each valve consisting of a sleeve screw-threaded into the opening, the upper end of this sleeve being provided with a valve-seat, a tube the upper end of which is normally surrounded by the sleeve, a valve carried on the upper end of the tube, said end of the tube being provided with openings through which liquid may pass from the tank into the tube and into the bottles to be filled, a division-plate in the upper end of the tube and opposite the openings, a collar surrounding the tube and secured thereto, said collar having a recess or opening therein, a bent tube communicating with said recess, a spiral spring surrounding the collar and tube adapted to hold the valve in its seated position, a track consisting of a series of sections, one of which is adapted to be moved vertically and to carry bottles to be filled to the valve so that the mouth of the bottle will contact with the sleeve connected to the tube whereby upon the raising of the section the valve will be unseated and the liquid will pass from the tank into the bottles and means for operating the movable section as and for the purposes set forth.

5. In an apparatus for filling bottles, a tube,

a valve secured to the top of the tube, this end of the tube also being provided with openings, a sleeve surrounding and snugly fitting the tube, the upper end of this sleeve being provided with a valve-seat, a flange formed on said sleeve, another sleeve secured to the tube and having a collar formed upon its upper edge, a third sleeve also provided with a collar at its upper end and with an enlargement provided with a chamber communicating with the inside of the sleeve, a bent tube connected to said compartment and communicating with the chamber therein, a stopper fitting over the lower portion of the last-mentioned sleeve and abutting against the collar thereof and a spiral spring fitting over the first-mentioned sleeve and the tube, the upper end of which abuts against the flange of the first-mentioned sleeve and the lower end abuts against the flange of the second sleeve as and for the purposes set forth.

6. In an apparatus for filling bottles, a tube, a valve secured to the top of the tube, a division-plate secured within the upper end of the tube, adjacent to the valve, this end of the tube also being provided with openings, a sleeve surrounding and snugly fitting the tube, the upper end of this sleeve being provided with a valve-seat, a flange formed on said sleeve, another sleeve secured to the tube and having a collar formed upon its upper edge, a third sleeve which is also provided with a collar at its upper end and with an enlargement provided with a compartment with the inside of the sleeve, a bent tube connected to said compartment and communicating with the openings therein, a stopper fitting over the lower portion of the last-mentioned sleeve and abutting against the collar thereof and a spiral spring fitting over the first-mentioned sleeve and the tube, the upper end of which abuts against the flange of the first-mentioned sleeve and the lower end abuts against the flange of the second sleeve as and for the purposes set forth.

7. In an apparatus for filling bottles, a tank adapted to contain the liquid to be bottled, an opening in said tank, a valve connected to said opening, said valve consisting of a sleeve screw-threaded into the opening, the upper end of this sleeve being provided with a valve-seat *r*, a tube the upper end of which is normally surrounded by the sleeve, a valve carried on the upper end of the tube, this end of the tube being provided with openings through which liquid may pass from the tank into the tube and into the bottles to be filled, a division-plate in the upper end of the tube opposite the openings, a collar surrounding the tube and secured thereto, said collar having a recess or chamber therein, a tube communicating with said chamber and a spiral spring surrounding the collar and tube and adapted to hold the valve in its seated position, substantially as and for the purposes set forth.

8. In an apparatus for filling bottles, a frame, a tank supported on the frame, a series of valves connected to the tank, each of said valves consisting of a tube having an opening at or near the upper end thereof, a sleeve having an air-vent therein connected to the tube and adapted to be raised therewith, a track connected to the frame divided into sections, one section extending underneath the valves and adapted to support a receptacle for bottles, and means for moving the valves and the bottle-receptacles relatively toward each other whereby when the valves and bottles come in contact the tubes of the valves are moved to uncover the openings in the tank through which liquid may pass into the bottles.

9. In an apparatus for filling bottles, a frame, a tank supported on the frame, a series of valves connected to the tank, each of said valves consisting of a tube having an opening near the upper end thereof, a sleeve surrounding the tube, said sleeve securing the valve to the tank, another sleeve connected to the tube and adapted to be moved with the tube, a track divided into sections and extending underneath the valves secured to the tank, said track adapted to support crates carrying bottles, one of said sections being adapted to be moved vertically and to raise a crate of bottles to be filled against the valves, and means connected to said section whereby the said section may be raised so that the bottles will be moved against the valves to move the tubes through the first sleeve, whereby the openings in the tubes are uncovered and liquid is permitted to pass to the bottles.

10. In an apparatus for filling bottles, a frame, a tank supported on the frame, said tank having a series of openings therein, a series of valves connected to the tank each valve consisting of a screw-threaded sleeve adapted to fit in an opening in the tank, a tube adapted to move vertically in the tank, the upper end of which carries a valve, said end also having an opening therein through which liquid may pass when the valve is unseated, a sleeve secured to the tube and adapted to be raised with the tube and means between the two sleeves to keep the valves normally seated, a track divided into sections and extending underneath the valves, one of said sections being adapted to move vertically and to carry a crate of bottles to be filled against the sleeves secured to the tubes of the valves, and means adapted to be operated to raise the section carrying the crates whereby the bottles may be filled, substantially as set forth.

11. In an apparatus for filling bottles, a frame, a tank supported on said frame, a series of valve-seats in the tank, a series of valves connected to and extending into the tank, each of said valves consisting of a tube having an opening at or near the upper end thereof, a valve on the upper end of the tube adapted

to be seated on the valve-seat in the tank, a sleeve having an air-vent therein connected to the tube and adapted to move therewith, a track beneath the valves, the said track adapted to support a receptacle for bottles, and means for moving the valves and the track relatively toward each other whereby the valves and the bottles may be brought in contact and when brought in contact the tubes of the valves are moved to uncover the openings in the tank whereby the liquid may pass into the bottles.

12. In an apparatus for filling bottles, a frame, a tank supported upon the frame, a series of valves connected to the tank, each of said valves consisting of a tube having an opening near the upper end thereof, a sleeve surrounding the tube, said sleeve securing the valve to the tank, another sleeve having an air-vent therein connected to the tube and adapted to be moved with the tube, a track located underneath the valves said track adapted to support crates carrying bottles, and means for moving the bottles and valves relatively toward and from each other so that when the valves and bottles contact the tube will be moved through the first sleeve and the openings in the tank uncovered and the liquid permitted to pass to the bottles, and when the valves and bottles move from each other the valves will be closed to cut off the supply of liquid to the bottles.

In testimony whereof we affix our signatures in the presence of two witnesses.

RALPH G. WRIGHT.
KIRK K. WRIGHT.

Witnesses:
H. J. AUER,
CLIFFORD HUBBELL.

Stipulation

1789

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

HARRY D. LATHROP,
Plaintiff,
against
RICE & ADAMS CORPORATION,
a Corporation,
Defendant.

1790

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled action that the forgoing printed copy contains all the evidence, papers and proceedings as set forth in the stipulated praecipe and, subject to the correction of errors, if any appear, is a true and complete record on appeal to the United States Court of Appeals for the Second Circuit to review a judgment of the United States District Court for the Western District of New York in the action in said District Court entitled "Harry D. Lathrop vs. Rice & Adams Corporation."

1791

JOSHUA R. H. POTTS
Attorney for Plaintiff-Appellee
JOHN S. POWERS
Solicitor of Counsel for Plaintiff-Appellee
MITCHELL & STAPLES
Attorneys for Defendant-Appellant.

716

1792

Certificate of Record

Western District of New York. } ss.
United States of America, }

I, HARRIS S. WILLIAMS, Clerk of the United States District Court for the Western District of New York, do hereby certify that the foregoing and annexed printed transcript of the record on appeal has been presented to me with a stipulation by the attorneys that such printed copy is a

1793 true transcript of the record on appeal to the United States Circuit Court of Appeals for the Second Circuit on an appeal from a decree of the United States District Court for the Western District of New York in the cause in said District Court entitled Harry D. Lathrop against Rice & Adams Corporation as appears from the stipulation relating thereto and agreed to be considered as the praecipe on said appeal signed by the solicitors for the respective parties to this action

1794 and printed therein, and I do certify the same to be the transcript of the record on said appeal.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be affixed at the City of Buffalo, N. Y. this 9th day of September, 1927.

HARRIS S. WILLIAMS
Clerk.

(SEAL OF COURT)

May C. Dickmon
Chief Deputy

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1927

No. 160

Argued February 9, 1928. Decided February 20, 1928

RICE & ADAMS CORPORATION, Appellant,

v.

HARRY D. LATHROP, Appellee

Appeal from the District Court of the United States for the Western District of New York

Before Manton, L. Hand, and Augustus N. Hand, Circuit Judges

Mitchell & Staples, of Buffalo, N. Y., for appellant.

Joshua R. H. Potts, of Philadelphia, Pa., Eugene V. Clarke, and John S. Powers, of Buffalo, N. Y. (Helen T. West and Homer M. Hartford, both of Philadelphia, Pa., of counsel), for appellee.

Per CURIAM: Decree affirmed, with costs.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court rooms, in the Post Office building, in the city of New York, on the 27th day of February, one thousand nine hundred and twenty-eight.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Augustus N. Hand, Circuit Judges.

HARRY D. LATHROP, Plaintiff-Appellee,

v.

RICE & ADAMS CORPORATION, Defendant-Appellant

DECREE—Filed Feb. 29, 1928

Appeal from the District Court of the United States for the Western District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Western District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

M. T. M., L. H.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING

To the Honorable the Chief Judge and to the Associate Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of Rice & Adams Corporation, the above named defendant-appellant, respectfully shows to this Honorable Court:

That the above entitled suit was brought in the United States District Court for the Western District of New York by the above named plaintiff-appellee to restrain the infringement of a patent which was about to expire for a can washing machine, owned by the said plaintiff, and to recover

an accounting for profits and damages for such infringement.

That the plaintiff applied for a preliminary injunction and his application was denied, Judge Hazel holding in his opinion that

"Infringement has ceased and the responsibility of defendant is unquestioned, and the recovery of damages, I think, is sufficient protection for past infringements."

Citing Russo v. Barber, 276 Fed. 552.

That thereafter a motion was made by defendant to transfer said action to the law side of the court on the ground that the denial of the plaintiff's application was a determination that the plaintiff was not entitled to any injunction when the action was commenced, therefore equity was without jurisdiction to proceed further therein. The defendant's said motion was denied and an opinion was filed thereupon which is reported in 6 Fed. 2nd at page 91.

That the defendant renewed its said motion at the beginning of the trial and very seriously argued the point in its briefs and upon the argument in this Court.

That your petitioner is aware that there is an apparent conflict in the decisions of the courts in the various Circuits on the question involved, and that this conflict is in some degree occasioned by the conflict which is thought to exist between Root v. Railway Company, 105 U. S. 189 and Clark v. Wooster, 119 U. S. 322. (See opinion of this Court in Le Roy v. De Vry Corporation, 16 Fed. 2nd 18, at page 20.) That this conflict is referred to by Judge Holt in the Southern District of New York in Diamond Co. v. Seus, 159 Fed. 497 and by Judge Lacombe of this Court in Tompkins v. International Paper Co., 183 Fed. 773; the decisions in these cases apparently supporting the rule that equity is without jurisdiction of an infringement suit brought when the patent is about to expire in which no special reasons are shown why the remedy at law is not adequate.

That the plaintiff's bill in the instant case does not allege, nor are there any proofs in the record that any special reasons exist why the remedy at law herein is not adequate; nor does said bill even allege that plaintiff has not an adequate remedy at law.

That the decision in Woodmanse v. Williams, 68 Fed. 489, in the Circuit Court of Appeals 6th Circuit, wherein Mr. Chief Justice Taft, then a member of that Court, participated, and Judge Lurton wrote the opinion, held at page 492:

"It must appear that the legal remedy at law is inadequate, and if the case is one in which equitable relief by injunction is inappropriate, as where the patent has expired, or where the circumstances are such as to justify a court in refusing equitable relief, the suit will not be entertained for the mere purpose of an account of past damages and profits."

And in Kennicott v. Bain, 185 Fed. 520, the Circuit Court of Appeals 7th Circuit held that where, as in the instant case, infringement had ceased, an injunction was properly refused and the bill dismissed, and that whatever rights were left to the plaintiff must be asserted in a suit at law for damages, no ground existing for a bill in equity.

That your petitioner had supposed that the question was set at rest in this Circuit by the decision in Le Roy v. De Vry Corporation, 16 Fed. 2d 18 in accordance with the rule laid down by Woodmanse v. Williams, Kennicott v. Bain, Tompkins v. International Paper Co. and Tompkins v. St. Regis although in the De Vry case no preliminary injunction was applied for, the court declaring that none was justified on the record.

That your petitioner has been unable to find any previous case in this Circuit where prayer for a preliminary injunction was denied and the Court thereupon decided whether or not equity had jurisdiction to proceed further and take an accounting of profits and damages. That the District Court has clearly held in the instant case that equity has such jurisdiction, and this Honorable Court by its affirmance of the trial court's decree without opinion has made that decision the rule of this Circuit. Your petitioner is advised and believes that the rule so established in this Circuit is contrary to the rule declared in the above mentioned Woodmanse case in the 6th Circuit and the Kennicott Case in the 7th Circuit and therefore respectfully prays that a rehearing be granted and that this question may be reconsidered.

That your petitioner further shows that it is advised that the conflict between the decisions of the courts in different Circuits is such that there is serious confusion as to whether or not equity jurisdiction exists under circumstances such as those disclosed in the instant case, and unless this Honorable Court is of the opinion that no such conflict exists regarding the rule and that the courts in the different Circuits are in harmony in relation thereto, your petitioner respectfully prays that the question be certified to the Supreme Court.

And your petitioner will ever pray.

Rice & Adams Corporation, by J. P. McKinley, President. Mitchell & Staples, Attorneys for Defendant-Appellant. Office and P. O. address: 1144 Prudential Bldg., Buffalo, N. Y.

STATE OF NEW YORK,
County of Erie,
City of Buffalo, ss:

J. P. McKinley, being duly sworn, deposes and says: that he is the president of the Rice & Adams Corporation, the petitioner named in and who signed the foregoing petition; that he has read the said petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and, as to those matters, he believes it to be true, and that this application is made in good faith and not for the purpose of delay.

J. P. McKinley.

Subscribed and sworn to before me this 10th day of March, 1928. C. E. Mayer, Commissioner of Deeds.

I hereby certify that I have examined the foregoing petition and in my opinion it is well founded and entitled to the favorable consideration of this Honorable Court and is not interposed for the purpose of delay.

Dated March 10th, 1928.

Fred'k G. Mitchell.

In United States Circuit Court of Appeals, Second Circuit

[Title omitted]

Order Denying Rehearing—Filed March 23, 1928

A petition for a rehearing having been filed herein by counsel for the appellant,

Upon consideration thereof it is

Ordered that said petition be and hereby is denied.

M. T. M., L. H.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

Supreme Court of the United States

Order Allowing Certiorari—Filed October 8, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,464. U. S. Circuit Court of Appeals, Second Circuit. Term No. 155. Rice & Adams Corporation, petitioner, vs. Harry D. Lathrop. Petition for writ of certiorari and exhibit thereto. Filed May 24th, 1928. File No. 33,464.

End

SUPREME COURT OF THE UNITED STATES.

No. 155.—October Term, 1928.

Rice & Adams Corporation, Petitioner, *vs.* Harry D. Lathrop.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 18, 1929.]

Mr. Justice Sutherland delivered the opinion of the Court.

The question here to be determined arose in a suit in equity by respondent against petitioner, brought in the federal district court for the Western District of New York, for infringement of a patent. The bill alleged repeated and continuing infringement of the patent by petitioner, preparation and readiness to continue such infringement, and that unless petitioner was restrained respondent would suffer great and irreparable damage, etc. It was further alleged that in a prior suit for infringement, brought by respondent against the Bowman Dairy Company, the patent had been sustained as valid and infringed; that the defense to that suit was openly conducted by petitioner, who paid all expenses as well as the judgment rendered by the final decree; that such decree, therefore, became *res judicata* as against petitioner. The prayer was for an interlocutory as well as a perpetual injunction, and for an account to be taken of profits realized by petitioner and damages sustained by respondent.

At the time suit was brought, only 41 or 42 days remained before the expiration of the patent. Two days after beginning suit, respondent moved for a preliminary injunction. After a hearing upon affidavits, the motion was denied. The court thought no injury would result to respondent by a refusal to grant the injunction at that time; that infringement had ceased; that the responsibility of petitioner was unquestioned; and that the recovery of damages would be a sufficient protection for past infringement. Subsequently, a motion by petitioner to transfer the case to the

law side of the court was made and denied. The grounds for the denial were stated in an opinion by the district judge, 6 F. (2d) 91, in the course of which he said:

"In the circumstances, plaintiff had a right, at the time this action was instituted, to commence in equity and to assert that right to an injunction existed. . . I must therefore hold that the relief sought in the bill was grantable, and it was only denied by the court in the exercise of its discretion, . . ."

The case was then proceeded with as a suit in equity. Before the trial was entered upon, the patent in the meantime having expired, petitioner renewed its motion to transfer to the law docket, which was again denied. The trial resulted in a decree for respondent, holding the patent to be valid and infringed, 21 F. (2d) 124; and this decree was affirmed by the court below on appeal without opinion. 24 F. (2d) 1021.

The sole question for our consideration is whether, after refusing the preliminary injunction, the district court was justified in retaining jurisdiction of the case as a suit in equity. We allowed the writ and brought the case here because of an alleged conflict in respect of that matter among the decisions of the circuit courts of appeal.

The question is very nearly set at rest by *Clark* v. *Wooster*, 119 U. S. 322. There, suit was brought to restrain a patent infringement and to recover profits and damages. The patent involved expired 15 days after the bill was filed. It did not appear whether an application for an interlocutory injunction was made, but under the rules of the court there was time before the expiration of the patent within which it could have been made. The final decree established the patent and its infringement, and a reference was made to a master to take and state an account. The jurisdiction of the trial court sitting as a court of equity was challenged. This Court sustained the jurisdiction and held that it was within the discretion of the trial court under the circumstances to retain the bill as it did. The opinion then proceeds (p. 325):

"It might have dismissed the bill, if it had deemed it inexpedient to grant an injunction; but that was a matter in its own sound discretion, and with that discretion it is not our province to interfere, unless it was exercised in a manner clearly illegal. We see no illegality in the manner of its exercise in this case. The jurisdiction had attached, and although, after it attached, the principal ground for issuing an injunction may have ceased to exist by the

expiration of the patent, yet there might be other grounds for the writ arising from the possession by the defendants of folding guides illegally made or procured whilst the patent was in force. The general allegations of the bill were sufficiently comprehensive to meet such a case. But even without that, if the case was one for equitable relief when the suit was instituted, the mere fact that the ground for such relief expired by the expiration of the patent, would not take away the jurisdiction, and preclude the court from proceeding to grant the incidental relief which belongs to cases of that sort. This has often been done in patent causes, and a large number of cases may be cited to that effect; and there is nothing in the decision in Root *v.* Railway Co., 105 U. S. 189, to the contrary. Cotton Tie Co. *v.* Simmons, 106 U. S. 89; Lake Shore, &c. Railway *v.* Car-Brake Co., 110 U. S. 229; Consolidated Valve Co. *v.* Crosby Valve Co., 113 U. S. 157; Thomson *v.* Wooster, 114 U. S. 104."

And see *Beedle* v. *Bennett*, 122 U. S. 71; *Busch* v. *Jones*, 184 U. S. 598, 599-600.

The decisions of this Court upon the point are entirely harmonious. *Root* v. *Railway Co.*, referred to in the foregoing quotation, presents no exception. There, suit was brought long after the expiration of the patent. No ground for equitable jurisdiction properly could be alleged, for, plainly, none existed, and the bill was merely for an accounting of profits and damages, the remedy at law for which was complete. Accordingly, a decree dismissing the bill was affirmed. We deem it unnecessary to review the decisions in the several circuits thought to be in conflict.

In *Clark* v. *Wooster, supra*, when the bill was filed, the patent had 15 days to run; in the present case, 41 or 42 days remained. The only substantial difference between the two cases is that here an application for an interlocutory injunction was made and denied. But the bill stated a case for equitable relief, and the order denying the interlocutory injunction constituted no bar to a subsequent application upon changed conditions. 2 High on Injunctions, (4th Ed.) § 1586. While we see nothing to prevent a retention of jurisdiction by the chancellor based upon that contingency, we do not rest upon that ground.

An interlocutory injunction, at least ordinarily, is not a matter of strict right; but the application is addressed to the sound discretion of the court. 1 High on Injunctions, (4th Ed.) §§ 11 and 937. And here the trial court denied the application, not because it would have been error to grant it, but in the exercise of its dis-

cretion, principally based upon a balancing of the relative conveniences and inconveniences which might result. This is made clear by the trial judge, who, interpreting his own action, expressly held that the relief sought was grantable but was only denied by the court in the exercise of its discretion. That the case was one for the exercise of discretion is plain. *Id.*, § 937; *Southwestern Brush Elec. L. & P. Co.* v. *Louisiana Elec. L. Co.*, 45 Fed. 893, 895-896; *Whitcomb* v. *Girard Coal Co.*, 47 Fed. 315, 317-318; *Rousso* v. *Barber*, 276 Fed. 552, 553. The order denying the injunction, therefore, was conclusive in an appellate court; and an order granting it would have been equally so. *Buffington* v. *Harvey*, 95 U. S. 99, 100.

As applied to the question under consideration, there is no sound reason for making a distinction between a failure to obtain an interlocutory injunction, because not asked for, and a like failure, because, though asked for, it was denied only in the exercise of a discretion which might have been rightfully exercised the other way. This was plainly recognized in the *Wooster* case, where it was said that if the trial court had deemed it *inexpedient* to grant an injunction it might have dismissed the bill, "but that was a matter in its own sound discretion," which would not be interfered with by this Court unless exercised in a manner clearly illegal. (Since the adoption of Equity Rule 22, the question for the court in the case supposed would be not whether to dismiss the bill but whether to transfer the suit to the law side of the court. *Twist* v. *Prairie Oil Co.*, 274 U. S. 684, 689.) The action of the trial court here in denying the motion to transfer was within its authority, and does not call for our interference. Jurisdiction of the court sitting in equity, having been rightfully invoked, was not lost either because the interlocutory injunction was denied in the exercise of judicial discretion or by the expiration of the patent pending final decree. This conclusion finds support in the principle that "a court of equity ought to do justice completely and not by halves," and to this end, having properly acquired jurisdiction of the cause for any purpose, it will ordinarily retain jurisdiction for all purposes, including the determination of legal rights that otherwise would fall within the exclusive authority of a court of law. *Greene* v. *Louis. & Interurban R. R. Co.*, 244 U. S. 499, 520; *McGowan* v. *Parish*, 237 U. S. 285, 296; *Camp* v. *Boyd*, 229 U. S. 530, 551-552.

Decree affirmed.